Supreme Court, U.S.
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(2)

NO. 87-2041

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1987

WALTER L. JONES, PRO SE,
PETITIONER

V.

NIAGARA FRONTIER TRANSPORTATION AUTHORITY, ET AL.
RESPONDENTS

PETITIONER'S APPLICATION FOR A SUMMARY DISPOSITION ON THE MERITS, SUMMARY REVERSAL, AND PERMISSION TO AMEND COMPLAINT AND MERGE CLAIMS; AWARDING DOUBLE COSTS AND PERMISSION TO PROCEED PRO SE BEFORE ANOTHER JUDGE, PURSUANT TO THIS COURT'S RULES 23.1., 42.1., 50.2., 3., 5., 6., 7., AND PURSUANT TO TITLE 28, USC § 455(a), 1653 AND 1654.

WALTER L. JONES, Pro se
for himself
167 Roebling Avenue
Buffalo, New York 14215
(716) 894-4508

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NO. 87 - 2041

IN THE SUPREME COURT OF THE UNITED STATES

WALTER L. JONES, PRO SE

Petitioner,

vs.

APPLICATION
FOR
MULTIPLE RELIEFS

NIAGARA FRONTIER TRANSPORTATION AUTHORITY, ET AL,

Respondents.

APPLICATION IS HEREBY MADE by the Petitioner, to the United States Supreme Court, for a summary disposition on the merits, and summary reversal, reinstating Petitioner's individual standings, and granting the Petitioner Pro se, permission to file an Amended and Supplemental Complaint, and to merge his wholly owned Corporation's claims, with his individual claims, before another judge, awarding Petitioner, double costs, pursuant to this Court's Rules 23.1, 42.1, 50.2, .3, .5, .6, .7, and pursuant to Title 28 USC, Sections 455(a) 1653, and 1654.

REASONS FOR GRANTING RELIEF

This case has nationwide implications, with regards to a non-lawyer, aggrieved "Black, Pro se" (natural person) litigant, being deprived of his constitutional and statutory rights to protect, and vindicate the denial of his constitutional rights, statutory entitlements, and property interests, who, because of racial discrimination, and economical deprivations, does not possess the social, nor financial status to obtain and/or hire conflict-of -interest-free, qualified, responsible, responsive counsel to represent his interests, fully, before the federal court system, because of the affluent Respondents' dominating influences, and social status' within the community.

The Respondent, United States Government waived its right to file a response, in opposition to the Petition for Writ of Certiorari in this case by "waiver", dated July 12, 1988, "unless requested to do so by this Court". Likewise, the remainder of the Respondents waived their right to file responses, in opposition

to the Petition for Writ of Certiorari, in this case, because of their inability to controvert, and face the issues presented in the Petition, now before this Court.

Respondents therefore have failed entirely to present any controvert, or argument to rebut the claims, and arguments presented by the Petitioner, pertaining to the issues now before this Court, supported by the Appendix, (RECORD BELOW).

Since this case never reached the merits, and in light of the Respondent's inability to face the issues presented in the Petition, and this case having nationwide implications, the need for plenary review of this action is now therefore indisputable.

The Petitioner respectfully suggests that summary reversal is now in order, and "manditory", with respect to the decisions, judgements, and mandates rendered, and entered below, since, and including April 17, 1981, and supervision, by this Court, is now therefore fundamental to the future conduct of this case below.

Indeed, to allow the decisions below to stand, under the circumstances of this case, is effectively, to unconstitutionally exclude the Petitioner, and his MBE firm, from the court, without due process, without equal protection, and denial of representation.

The attorney who was most recently representing the Petitioner's "wholly owned" Corporation, below, is not authorized to practice before this Court, and made no attempt, or effort to qualify himself, in order to appear before this Court, on behalf of the Petitioner's Corporation, in disregard to the Petitioner's request; all in furtherance of the attorneys' conflict-of-interest issues raised in the Petition, now before this Court.

SUMMARY OF RELEVANT FACTS

Beginning in 1978, the Petitioner, as a beneficiary of the ACTS, under Title VI, made numerous individual, documented efforts, through his wholly owned (non-union) MBE general construction firm, (WALTER L. JONES DEVELOPMENT CORPORATION, INC.) to participate in the main stream of the construction activities, on the federally

funded Buffalo Subway Construction Project, and to personally benefit from his and his MBE firm's participation thereon, in accordance to Agreements, Contracts, and statutory and regulatory provisions, under the Civil Rights, and Urban Mass Transportation "ACTS" of 1964.

The Petitioner sought to participate by the methods of estimating, preparing, and submitting seven (7) sealed bids, and written requests for assistance, to the federal Grant Recipient, N.F.T.A.'s officials, and administrators, on behalf of his wholly owned non-union, MBE corporate firm; being the low bidder on three (3) separate occasions, before the commencement of this law suit, totalling $47,870,186.36, and once thereafter; for a grand total of $56,602,478.00.

The Petitioner further, after being denied the low bid contracts, sought to participate on the Project, through his non-union MBE firm, in accordance to the Agreements, Contracts, and statutory, and regulatory provisions under the "ACTS", by the additional method of estimating, preparing, and submitting eight (8) addi-

tional, written sub and/or joint venture contract/proposals, to White owned, participating, unionized construction firms' officers and administrators, totalling $39,015,464.00. However, all efforts made by the Petitioner were intentionally, and purposefully rejected, with malice, through a conspiracy, because of the Petitioner's race, and his firm's non-union general contracting status, which deprived Petitioner of the benefits of his, and his MBE firm's statutory entitlements, under the "ACTS".

In order to seek judicial relief, the Petitioner commenced this action, Pro se, on November 24, 1980. (See Appendix E, page 80a, bound to the Petition). On March 30, 1981, an attorney, John L. Hargrave, Sr., who is now deceased, appeared, in open court, on behalf of the "Corporation", and joined the Petitioner's motion for leave to amend the Complaint, which was granted, from the bench, by the Court, directing service by April 3, 1981. (See Appendix E, page 83a, bound to the Petition).

In accordance to the Court's March 30,

1981 directive, the Petitioner, and the now deceased attorney, representing his MBE corporate firm, filed, and served a jointly signed, amended complaint, on April 3, 1981, entitled "AMENDED AND SUPPLEMENTAL COMPLAINT". (See Appendix E, page 83a, bound to the Petition). (See also Appendix F and G, pages 95a-168a, bound to the Petition). THIS COMPLAINT MADE MOOT, ALL PRIOR COMPLAINTS, FILED BEFORE APRIL 3, 1981.

On April 17, 1981, without any motions being filed and/or served to dismiss the "AMENDED AND SUPPLEMENTAL COMPLAINT", the District Court, sua sponte "WITHOUT NOTICE" and "WITHOUT HEARING", dismissed the Petitioner's individual claims, as alleged in the "AMENDED AND SUPPLEMENTAL COMPLAINT", and/or disregarded those claims, as filed on April 3, 1981, upon the grounds that Petitioner lacked standings to pursue his individual claims, [mootly] directing the Petitioner to hire an attorney to represent his wholly owned MBE corporate firm, in this case. (See Appendix D, pages 25a-31a, and 36a-37a, bound to the Petition).

Due to a dispute arising between the Petitioner and the now deceased attorney, (John L. Hargrave, Sr.) who was representing his wholly owned MBE corporate firm, and pursuant to the District Court's additional directive of May 26, 1981, Petitioner hired attorney, CHARLES L. DAVIS, (ATTORNEY DAVIS), on June 15, 1981, who, through fraud, deceit, conflict-of-interest, and in furtherance of the conspiracy, deleted and dropped twenty two (22) individuals, and twenty three (23) entities, and deleted the conspiracy allegations, and ad damnum clause, by deceitfully amending the complaint, without the Petitioner's initial knowledge, and over the Petitioner's prior, oral and written objections expressly made to the Court, and to ATTORNEY DAVIS, as is set forth on pages 17-21 in the Petition, and as supported by Appendix H-T, pages 169a-230a, bound to the Petition. See also Appendix G, pages 96a-168a, bound to the Petition.

Soon thereafter, the District Court sue sponte, entered an additional order, without

Petitioner's initial knowledge, directing ATTORNEY DAVIS, to show cause, why the parties, and entities, (deleted by him) should not be dropped from the action, and the claims dismissed, as to each of them. No appearance was made, by ATTORNEY DAVIS, in furtherance of the conflict-of-interest conspiracy, and the District Court dropped the Defendants, and dismissed the action, as to each of them,"WITH PREJUDICE, AND WITHOUT LEAVE TO FURTHER AMEND,"as to those parties. (See Appendix U-X, pages 231-241, bound to the Petition).

The aforementioned decisions, and acts by ATTORNEY DAVIS, deprived the individual Petitioner and his MBE firm of their substantive constitutional rights to due process, equal protection, and of his property interests, (protected by the Fifth and Fourteenth Constitutional Amendments) in this law suit, and are manditorily void, as a matter of law, VTA INC., VS. AIRCO, ET AL, 597 F 2d 220 (10th Cir. 1979).

Based upon the aforementioned, unconstitutional, SUA SPONTE decisions, and other uncon-

stitutional decisions, and the conflict-of-interest, acts committed by ATTORNEY DAVIS, and based upon a SINE DIE NOTICE, (Staying) all pending matters, being in effect, pending an appeal to the Court of Appeals, the individual Petitioner, as the sole stockholder, and operator of his Corporation, declined to answer questions at an oral deposition proceeding, on March 16, 1987. (See Appendix LL, pages 314a-377a, bound to the Petition).

However, the district Court, on April 15, 1987 abused its discretion, and arbitrarily dismissed this case, as a sanction, pursuant to Rule 37 of the Federal Rules of Civil Procedure, concluding that the Petitioner was trying to "coerce" the court into reinstating him as a party plaintiff. (See Appendix B, pages 17a-22a, bound to the Petition). The Court of Appeals departed from the accepted and usual course, and affirmed the District Court's decisions, on December 31, 1987, and denied a Petition for Re-hearing, on January 29, 1988. (See Appendix A and C, pages 1a-23a, bound to the

Petition).

It should now be pointed out, that after ATTORNEY DAVIS withdrew from representing the Corporation in this case, the Petitioner Pro se, sought to reinstate the dropped parties, by amending the complaint, and joining parties, through assignment of the Corporation's claims, to himself, in October of 1982, which was denied by the District Court, on December 6, 1982, and affirmed by the Court of Appeals, on November 23, 1983, cited at 722 F 2d 20 (2nd Cir. 1983). (See Appendix C, page 18a, annexed hereto).

Petitioner, Pro se sought also, to amend the complaint, and join parties, in the Court of Appeals, in 1987, which was denied, as moot, on December 31, 1987. (See Appendix A, page 15a, bound with the Petition). See also the instant (proposed) amended complaint, annexed hereto, as App. D, page 31a.

The District Court judge, on October 11, 1985 further denied the Petitioner's Pro se motion for his disqualification, brought under 28 USC § 455 A and B(1), and the Court of

Appeals denied the Petitioner's motion for Writ of Mandamus, regarding the issue, on the 23rd day of January, 1986. See Appendix D, pages 55a-58a). (See also Appendix Z, page 251a).

The Petitioner acknowledges harmless errors in the Petition, and makes correction, by references; under "Table of Cases", on page V, Anderson National Bank v. Luckett, page no. "223", is corrected to "233"' on page VII, Klappott v. United States, volume no. "350", is corrected to "335"; and on page 54, Klappott v. United States, volume no "350", is corrected to "335"; under "Constitutional Statutes and Regulations", on page X, "42 USC § 1341", is corrected to "28 USC § 1343", and "42 USC § 1331", is corrected to "28 USC 1331".

ARGUMENT

The United States District Court, for the District of Maryland, Hon. Shirley B. Jones, in deciding, HOWARD SECURITY SERVICES, INC. V. JOHNS HOPKINS HOSPITAL, 516 F Supp. 508, 513, (1981) held that: a close corporation, wholly owned and operated, by its Black president, who

was allegedly denied the award of a contract, because of its president's race; to deal with the Corporation is, practically speaking, to deal with the individual, where the individual also asserted a personal claim, under § 1981. "THE INDIVIDUAL AND PERSONAL CLAIMS MAY WELL EFFECTUALLY MERGE", 516 F Supp at 513 (1981), footnote 12.

in this case, the circumstances are identical to those in HOWARD, in that the Petitioner alleged that he was harmed, and damaged, personally by the actions of the Defendants, whose actions were directed at PLAINTIFF, WALTER L. JONES, personally, and his Corporaiton, for his action, and efforts to introduce his, and other non-union, minority construction firms to the Authority, (N.F.T.A.), with the intent of acquiring contracts on the local "Light Rail Rapid Transit Construction Project". (See Appendix G, pages 100a-104a, bound to the Petition). HOWARD SECURITY SERVICE, INC., V. JOHNS HOPKINS HOSPITAL, 516 F Supp. 508, 513, (1981).

Moreover, Petitioner and his wholly own-

ed Corporation "MERGED", and alleged their claims in the "AMENDED AND SUPPLEMENTAL COMPLAINT", and requested joint relief, in the ad damnum clause, before ATTORNEY DAVIS made his fraudulent amendments. (See appendix G, pages 101a-168a), HOWARD SECURITY SERVICES, INC., V. JOHNS HOPKINS HOSPITAL., 516 F Supp. 508. 513 (1981). (Now see Appendix P, and R, pages 186a-201a, and pages 214a-228a).

The Petitioner, and his wholly owned Corporation's claims were alleged under Title VI of the Civil Rights Act of 1964, and under the Urban Mass Transportation Act of 1964, citing as jurisdiction, Title 28 USC, Sections 1331, 1343.... (See Appendix G, pages 101a-104a, bound to the Petition). Given the limited basis for the District Court finding that the Corporation had a cause of action, in this case, the Petitioner's individual claims would also suffice, and "the individual and the corporate claims may well effectively merge", 516 F Supp. at 513, footnote 12.

Due to the Petitioner's having commenced

this law suit Pro se, and having encountered the difficulties, as set forth herein, the Petitioner should be permitted to merge his wholly owned Corporation's civil rights claims, with his individual civil rights claims, upon reversal, and proceed Pro se, to the merits. "HOWARD", 516 F Supp. 508, 513 (1981); HAINES V. KERNER, 404, US 519 (1971); O'RILLEY V. NEW YORK TIMES; 692 F 2d 863 (2nd Cir. 1982).

The Petitioner, after being denied oral argument, on September 16, 1985, presented argument to the District Court, citing "HOWARD"; 516 F Supp. 508, 513 (1981), in a letter, dated September 18, 1985, as authority for the District Court's reconsideration of the standings issue. (See Appendix A, pages 1a-6a, annexed hereto) (See also Appendix D, pages 59a-79a, bound to the Petition)

The Petitioner further, on appeal, presented argument to the Court of Appeals, citing "HOWARD"; 516 F Supp. 508, 513 (1981), in his Brief, dated December 10, 1985, as authority, with respect to his individual constitutional

standings. The appeal was dismissed for lack of finality. (See Appendix B, pages 7a - 16a, annexed hereto) (See also Appendix Z, pages 250a-251a, bound to the Petition).

The Petitioner respectfully submits that, to allow the decisions below, to stand, under the circumstances of this case, is effectively to unconstitutionally exclude the Petitioner, and his MBE firm, from the court, without due process, without equal protection, and denial of representation, upon "MANDITORY" - VOIDABLE, reversible decisions; VTA INC., V. AIRCO, ET AL: 597 F 2d 220 (10th Cir. 1979). KLAPPOTT V. UNITED STATES: 335 US 602 (1949); JOHNSON V. ZERBST: 304 US 458 (1938); ANDERSON NATIONAL BANK V. LUCKETT: 321 US 233, 246 (1944); ARMSTRONG V. MANZO; 380 US 545, 552 (1960). See also MATTER OF HOLLOWAY TAX SERVICE INC, 417 F Supp. 182 (E D NY 1976).

The District Court's decision to dismiss this case, as a sanction, pursuant to Rule 37, of the Federal Rules of Civil Procedures, is in direct conflict with this Court's holding,

in SOCIETE INTERNATIONAL V. ROGER, 387 US 197, 198-213 (1958); which held that, on the Record, dismissal of the complaint, with prejudice, was not justified. The Petitioner respectfully suggests that, upon the Record, in this case, dismissal, as a sanction, was not justified, in view of the constitutional questions, in which the issues focus on. SOCIETE INTERNATIONAL V. ROGER; 387 US 198-213 (1958); See also WHELLING V. COLUMBIA BROADCASTING SYSTEM: 603 F 2d 1084 (8th Cir. 1979); SALAHUDDIN V. HARRIS; 782 F 2d 1127 (2nd Cir. 1986); C.F. IN RE MAERTIN - TRAGONA; 763 F 2d 140 (2nd Cir. 1985).

Due to the Petitioner, Pro se, being precluded from self representation, in this case, due to a denial of his statutory, and constitutional rights, since April, 1981; the Petitioner's individual constitutional standings should be reinstated, granting him permission to amend the Complaint, and to join parties, in the Court below, upon reversal, pursuant to 28 USC § 1653 and 1654. HAINES V. KERNER; 404 US 519 (1971); CANNON V. UNIVERSITY OF CHICAGO: 401 US 677

(1979); MOORE V. COAT COMPANY: 270 F 2d 410 (3rd Cir. 1959); COX V. LIVINGSTON: 407 F 2d 392 (2nd Cir. 1969); ROTOLO V. BROUGH; 532 F 2d 920 (3rd Cir. 1976).

The Court of Appeals held, in "ROTOLO", that a "civil rights' suit was appropriate for application of statute which expressly allows amendment of defects to jurisdiction allegations"...., and that "Plaintiff was entitled to amend civil rights complaint, which was insufficient, due to vague and conclusory allegations", 532 F 2d 920 (3rd Cir. 1976). The Court of Appeals held, in "MOORE", that "where the Plaintiff appeared Pro se, and was unskilled in law, the court must view his pleadings, and the applicable procedures liberally". 270 F 2d 410 (3rd Cir. 1959).

Furthermore, the Court of Appeals held in "COX", that "Section 1653 of the Judicial Code 28 USC, § 1653 (1964), expressly provides that (d)efective allegations of jurisdiction may be amended, upon terms in the trial or Appellate Courts", 407 F 2d 392 (2nd Cir. 1969).

In CHURCH OF SCIENTOLOGY OF CAL. V. COPPER; 495 F Supp. 455 (1980), the court held that: "Recusal was appropriate where trial judge's impartiality might be questionable" ..... and that the court has no power or authority to contest, in any way, the validity of recusal allegation , citing BURGER V. UNITED STATES; 255 US 22, 33, (1921); E G MIMS V. SHAPP; 541 F 2d 415, 417 (3rd Cir. 1976); HODGSON V. LIQUOR SALESMENS' UNION; 444 F 2d 1344, 1348 (2nd Cir. 1971) 28 USCA 144; 455a.

The court held, in WEBBE V. McGHIE, ET AL; 549 F 2d 1358, 1361, that: "the appearance of impartiality is virtually as important as the fact of impartiality", and where the trial judge had announced that the party was "stuck", and granted his opposition, summary judgement, the court reversed, and concluded that there was no reasonable likelihood that the judge, having been reversed, could later preside over the trial, in a fair and impartial manner, and thus directed all further proceedings be conducted by another judge. 549 F 2d at 1361 (1977)

In this case, the District Court judge concluded, upon his dismissing this case, as a sanction, that the Petitioner was trying to "coerce" the court into reinstating him, as a party. WEBBE V. McGHIE, ET AL; 549 F 2d at 1361 (1977).

RELIEF REQUESTED

The Petitioner most respectfully asks this Honorable Court to exercise its authority, and protect his individual constitutional, and statutory rights, in this case, and render a summary disposition, upon the merits, directing summary reversal, voiding all decisions, judgements, and mandates, entered below, since and including April 17, 1981, permitting him, Pro se, to merge his wholly owned Corporation's claims, with his individual claims, directing that he be allowed to amend the complaint, and to join parties, with double costs, and directing this case be transfered before another Judge, for further proceedings, pursuant to 28 USC, Sections 455(a), 1653, 1654, and pursuant to this Court's Rules 23.1, 42.1, 50.2, .3, .5, .6, .7, and/or grant Writ of Certiorari.

DATED: Buffalo, New York
September 6, 1988

WALTER L. JONES, Pro se
167 Roebling Avenue
Buffalo, New York 14215
(716) 894-4508

APPENDIX A

PETITIONER'S LETTER TO JUDGE ELFVIN

DATED SEPTEMBER 18, 1985, CITING

HOWARD SECURITY SERVICE, INC., V. JOHNS

HOPKINS HOSPITAL

WALTER L. JONES
204 Kings Highway
Snyder, New York 14226

September 18, 1985

Hon. John T. Elfvin,
U.S. Dsitrict Court
Western District of New York
U.S. Courthouse
68 Court Street
Buffalo, New York 14202

HAND DELIVERED

Re: Walter L. Jones vs. N.F.T.A., et al
Civ. No. 80-1075E

Dear Judge Elfvin:

This letter is to confirm that I appeared, Pro se in court on September 16, 1985 and signed the sign - in sheet that all of the attorneys signed, on my individual motion and supplemental motion, as scheduled by the court's scheduling orders, dated August 8, 1985, and August 20, 1985.

This is to further confirm that you stated that you would not hear my Pro se motions, due to your having dismissed my individual causes of action from this multi - party and multi claim "civil rights action", upon the grounds that I had no standings of which my motions sought reconsideration of, as well as other reliefs, conclusive of the court's denying my my individual right to "due process" by refusing

to grant me a review of its determinations,

Due to my being precluded from arguing my individual motion and supplemental motion, I am therefore compelled to write this letter and attempt to respond to several of the issues that were raised on September 16, 1985, at the scheduled proceeding.

In accordance to Title VI of the Civil Rights Act of 1964, I am the "person", and beneficiary of the statute, due to my individual racial origin, American citizenship, and my being the owner of my MBE firm.

I was denied, through conspiracy, class and racial discrimination; my "individual civil rights", to participate on the Buffalo Subway Construction Project, which rights were extended under Title VI of the Civil Rights Act of 1964; from which I, Pro se, commenced this multi-party, and multi-claim civil rights action, to redress and recover damages, and punitive damages against the Defendants, for their intentional and malicious discriminatory acts against me.

This court, however, has determined that I have no standing to sue in this "civil rights", multi-party and multi-claim action, of which I am respectfully in a supported difference of opinion, and was attempting to be heard, by formal motion, on September 16, 1985.

Rule 54(B) of the Federal Rules of Civil Procedure provides and authorizes that, "when more than one claim for relief is presented

in an action, whether as a claim, counter claim, cross claim, or third party claim, or when multiple parties are involved, the court may direct the entry of a final judgement, as to one or more, but fewer than all of the claims, or parties, only upon a express determination, that there is no just reason for delay, and upon an express direction for the entry of judgement." "In the absence of such determination and direction, any order, or other form of decision, however designated, which adjudicates fewer than all the claims, shall not terminate the action, as to any of the claims or parties, and the order, or other form of decision is subject to revision, at any time, before the entry of judgement adjudicating all the claims, and the rights and liabilities of all the parties."

Rule 19(A) of the Federal Rules of Civil Procedure provides and authorizes that "A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject mater of the action, shall be joined as a party in the action, it (1) in his absence, complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action, and is so situated, that the disposition of the action, in his absence may (i) as a practical matter, impair or impede his ability to protect that interest, or (ii) leave any

of the persons, already parties, subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations, by reasons of his claimed interest. If he has not been so joinedd, the court shall order that he be made a party. If he should join as a plaintiff, but refuses to do so, he may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue, and his joinder would render the venue of the action improper, he shall be dismissed from this action.

Rule 56(A) of the federal Rules of Civil Procedure provides and authorizes that, "A party seeking to obtain a claim, counter claim, or cross claim, or to obtain a declaratory judgement, may, at any time after the expiration of (20) days from the commencement of the action, or after service of a motion for summary judgement by the adverse party, move, with or without supporting affidavits for summary judgement, in his favor, upon all or any part therof.

Section 1654 of 28 USC provides and authorizes, that, "in all courts of the United States, the parties may plead and conduct their own cases, personally, or by counsel, as by the rules of such courts, respectively, are permitted to manage and conduct causes, therein.

I, Pro se, pursuant to the above statute, rules, and provisions, prepared and filed the

subject motion and supplemental motion, to protect my individual rights, due to a number of the Defendants' attorneys' moving for certain reliefs, such as summary judgements, dismissals, and protective orders, upon the grounds that my individual claims were dismissed from this multi -party and multi - claim civil rights action, and upon the grounds that this action was barred by doctrine of res judicata, and upon the grounds that the order issued by you, was upon the merits, wherein you dropped the union defendants from this action, with prejudice, and without leave to further amend, for one default, committed by attorney Charles L. Davis, against my individual interest, and in violation of my individual "civil rights" to due process."

I am therefore, respectfully advising this court, that I am relying upon the pleadings and attachments, filed by me, as well as all of the pleadings and attachments that are referred to therein in this multi - party and multi - claim "civil rights" action, until such time, as I am allowed to be formally heard. I am herewith enclosing copies of the following cases: (1) Howard Sec. Serv. v. Johns Hopkins Hospital; (2) Minority Emp. er al vs. Tenn. dept. of Emply Sec.; and (3) Black Brothers Combined, etc., vs. City of Richmond; all of which, I gave copies to all opposing attorneys.

I, further reserve the right to correct any mis-statement of calculation error that might exist in my pleadings and prior arguments, including any arguments or pleadings made by attorney Barbara M. Sims, on my individual behalf, upon my acquiring the transcript of the proceedings held on November 19, 1984, April 1, 1985, April 29, 1985 and September 16, 1985, and upon completing the proofing, thereof.

Very truly yours,

WALTER L. JONES

WLJ:pj
Enc.
cc: See attached
Distribution List

APPENDIX B

POINT II OF PETITIONER BRIEF SUBMITTED TO THE COURT OF APPEALS IN 1985, CITING HOWARD SECURITY SERVICE INC., V. JOHNS HOPKINS HOSPITAL

UNITED STATES - COURT OF APPEALS
FOR THE SECOND CIRCUIT
DOCKET NOS.
85-7386 and 85-7194

WALTER L. JONES,
PRO SE

Plaintiff-Appellant,

-against-

NIAGARA FRONTIER TRANSPORTATION
AUTHORITY, ET AL,

Defendants-Appellees,

-and-

WALTER L. JONES, INDIVIDUALLY,
PRO SE,

Plaintiff-Appellant,

-against-

SIEGFRIED CONSTRUCTION CO.,
INC., ET AL,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK

BRIEF FOR PLAINTIFF-APPELLANT

POINT II

THE DISTRICT COURT ABUSED ITS DISCRETION ON OCTOBER 15, 1985, BY VACATING ITS PRIOR DETERMINATION TO CERTIFY THE INTERLOCUTORY ORDERS OF APRIL 17, 1981, AND OF FEBRUARY 12, 1985, DISMISSING THE APPELLANT'S INDIVIDUAL "CIVIL RIGHTS" CLAIMS, AND THEN GRANTING THE DEFENDANTS SUMMARY JUDGEMENT, DISMISSING THE PLAINTIFF'S INDIVIDUAL CLAIMS, UPON THE PREMISE OF ITS INTERLOCUTORY ORDERS, ISSUED ON APRIL 17, 1981, AND FEBRUARY 12, 1985. THE ORDER, GRANTING SUMMARY JUDGEMENT, SHOULD BE REVISED AND THE ORDERS VACATED, AND SET ASIDE.

Since the status of a minority business enterprise (MBE) depends upon the racial origin of the individual person(s), under federal regulations, stemming from Title VI, the individual person has standing to sue for alleged deprivation of such MBEs rights to participate on federally funded Projects, where he was directly affected and injured, by such acts, as herein.

It is a well settled rule, that standings to sue is related only to whether the dispute sought to be adjudicated will be presented in an adversary context, and in a form historically viewed as capable of judicial resolution. The United States Supreme Court amplified this rule most succintly, in Flast cs. Cohen, 392, US

43 (1968), 20 L Ed. 2d 497, reversed and remanded, 90 S Ct. 829, Association of Data Processing Service Inc., vs. William B. Camp, 409 US 205 (1972). and Trafficante vs. Metropolitan LIfe Insurance Co., 93 S Ct. 364 (1972). In the Flast decision, (supra), the United States Supreme Court, wrote:

> "In terms of Article III Limitations of Federal Court jurisdiction, the question of standing is related only to whether the dispute sought to be adjudicated, will be presented in an adversary context and in a form historically viewed as capable of judicial review,"

The practical application of this principal was subsequently recited by the U.S. Supreme Court, again in Association of Data Processing Services Organization, Inc., vs. William B. Camp, 90 S Ct. 827 (1970), wherein Supreme Court, Mr. Justice Douglas held that the Plaintiff, as a competitor of national banks, which was engaging in data processing services, was an "aggrieved" "person", under the Administrative Procedure Act, with standing to sue, stating:

> "Questions of standing, unlike "legal interest" tests concerns apart from "case"

or "controversy" tests, questions whether interest sought to be protected by Complainant is arguably within zone od interest to be protected or regulated by statute or constitutional guarantee in question." 90 S. C. 827, (1970).

The facts in the present case, civ. no. 80-1075E, far out-weigh those in Association and Flast, regarding the Plaintiff-Appellant's individually being an "aggrieved" "person", who is protected by federal statute, from which it should have been clear that the Plaintiff, individually; first and foremost, had standings in this "Civil Rights" action, for alleged racial discrimination and deprivation of individual "civil rights", guaranteed under Title VI.

In Guidry vs. Roberts, 331 S O 2d 44 (1976), the U.S. Court of appeals of Lousianna, for the First Circuit reversing and remanding that action, ruled that "standing" is a concept utilized in determining if a party is sufficiently effected, so that a justifiable controversy is present to the Court; the requirement of "standing is present, if it can besaid that the Plaintiff has a "legally protectable and tangible interest at stake in the litigation." LSA - CCP Art 1872.

This is the exact circumstances, now before this Court, where the Appellant was sufficiently effected, and has a legal, protectable,

tangible interest at stake in the civil rights action, 80-1075E, under Title VI.

It is well settled law, that Title VI of the Civil Rights Act of 1964 granted a private remedy to individual persons, who are memebers of the class for whose special benefits, said statute was enacted.

> "Several persona alleging racial discrimination across-the board in the construction industry had standing to sue several contractors and sub-contractors, even though they had never made direct applications for work, with them" Bird vs. Electrical Workers Local 24, 7 EPD 7472 (1974); Jenkins vs. United Gas Corp.; Carr vs. Conoco Plastics, Inc., (2 EPD 10 162) 423 F 2d 57, (5th Cir. 1969); United Transport Union vs. Penn Central; 443 F 2d 131 (6th Cir. 1971); Brown vs. Gatson County Dyeing Machine; 409 US 982 (1972).

The above cited cases are Title VI actions, which have a binding relationship to a title VI action, in that both Title VII and Title VI were enacted to protect individual citizens and/or persons, as herein.

The Supreme Court, on Certiorari, reversed and remanded the causes, where the District Court of the Northern district of Illinois had dismssed the Complaint, concluding that no

private remedy could be inferred under Title IX, because of the statute did not expresslyly authorize a private right of action for a person injured by a violation of the statute, which was affirmed by the United States Court of Appeals, for the Second Circuit. Cannon vs. University of Chicago, et al; 599 F 2d 1063.

The Plaintiff, in the case of Cannon vs. University of Chicago appealed on Certiorari to the U.S. Supreme Court, from the Court of Appeals - Seventh Circuit affirmation, 441 US 677, (1979).

The Supreme Court held, in Cannon, "It is not necessary to show an intention to create a private cause of action, in those situations where it is clear that federal law granted a class of persons, certain rights."

> "A private right of action for the enforcement of Civil Rights, may be implied from a federal statute not expressly providing for a private remedy, even when Congress has spoken in declarative terms."

The Supreme Court went on and further wrote, in CAnnon, that:

> "Title IX was patterned after Title VI of the Civil Rights Act of 1964, and the

drafters of Title IX especially assumed that it would be interpreted and enforced in the same manner as Title VI, which has already been construed by Federal Courts, as creating a private remedy, when title IX was enacted."

See also Santa Clara vs. Martinez; 436, US at 79, 56 L Ed 2d 106, 98, S Ct. 1670; Bossier Parish School Board vs. Lemon; 370, F 2d 847, 388 US 911, 18 L Ed. 2d 1350, 87 C Ct. 2116 (1967).

The Federal Courts have explicitly relied on Title VI as a basis for a cause of action on the part of a private victim of discrimination against the alleged discriminators. A distinguished panel of the Court of Appeals, for the Fifth Circuit, squarely decided this issue in the case of Bossier vs. Lemon; 388, US 911.

It was held by the United States Court of Appeals for the Seventh Circuit, that private citizens / taxpayers had standings to sue the federal agency in the case of Phyllis Schafly, et al vs. John A. Volpe - Secretary of Transportation, et al, 7 EPD 7379 (1974).

The Court of appeals for the Seventh Circuit, in the case of Shafley, wrote:

"Private citizens - residents in a state where federal funds for highway construction were frozen by the federal government, after a finding that equal employment opportunity goals had not been maet, had standing to sue the federal agency and the federal agency could not assert the defense of sovereign immunity", Phyllis Schafly, et al vs. John A. Volpe, Secretary of Transportation, 7 EPD 7379 (1974).

"Title VI permits any aggrieved party to sue and the private citizens were aggrieved, in that their tax dollars destined for highway construction, were frozen, and they were deprived of improved highways."

Clearly the Plaintiff-Appellant is the aggrieved party and has standings to sue the Defendants in this "Civil Rights" law suit, for their alleged intentional, racial discrimnation and deprivation of his individual civil rights to participate in th federally funded Buffalo Subway Construction Project, as the chief administrator and coordinator of his minority business enterprise (MBE) construction firm.

Moreover, the U.S. Supreme Court has consistently held that Title VI was enacted for the special benefits of particular classes of "persons" who the Plaintiff is a member of and the Courts, including the Supreme Court, has

unanimously concluded or assumed that a private action may be maintained under Title VI, which authorizes a private remedy for a "person", against whom discrimnation has been perpetuated, as herein. University of Calfornia Regent vs. Bakkee, 438, US 265 (1973), Lau vs. Nichols, 414 US 563 (1974); Bossier Parish Scholle Board bs. Lemon, 388 US 911, Uzzell vs. Friday, 547 F 2d 801 (1977), 558 F 2d 727, Serna vs. Portales, 499 F 2d 1147 (1974), Chambers vs. Omaha Public School District, 536 F 2d 223, 225 (1976).

> "Congress has repeatedly enacted legislation predicated on the assumption that Title VI may be enforced in a private action". "The conclusion that an individual may maintain a private cause of action is amply supported in the legislative history of Title VI it self." University of California Regent vs. Bakkee.

There exists most recent authority on Point, in support of the Plaintiff's position, with respect to his individual standing in the herein actions, pursuant to his being the sole stock-holder of his Corporation, where a Plaintiff stockholder alleges that the Defendants failed to award security contracts, due to his

race, Howard Security Service, Inc., et al vs. Johns Hopkins Hospital, 516 F Supp. 508 (1981).

The District Court for the District of Maryland, held in Howard, that:

> "Federal rules do not require that a complaint be very detailed, only that sufficient facts be stated to give notice of claim and such rule included discrimination complaints." 42 USC A §§ 1981 - 1985, USC A Const. Amends 13-15 ACt April 9, 1866 §§ 1-10, 14m atat, 27.

The Plaintiff-Appellant's "Amended and Supplemental Complaint", dated March 30, 1981, and filed on April 3, 1981, certainly superceded the minimum requirements, in stating the Plaintiff-Appellant's individual claims in civ. action no. 80-1075E, Howard Security Services, Inc., et al vs. Johns Hopkins Hospital, 516 F Supp. 508 (1981).

in the case of Howard, Plaintiff, Blanheim, a Black, is president and apparently the sole stock-holder of Howard Security Services, a close corporation, wherein the Hospital is alleged to have failed to award a contract to Howard, because Blanhein is Black, wherein Howard's claims were under § 1981 E. O. 11246

and Blanheim's claims were under 42 USC § 1981 and Title VI, 42 USC, § 2000d, and E. O. 11246.

The Plaintiff-Appellant's, A Black, claims in the present case before this Court is under 42 USc, Sections 1981, 1983, 1985, 1986, and Title VI 42 USC, § 2000d and E. O. 11246, wherein it is alleged that the Defendants, through a conspiracy, failed to award contracts to the Plaintiff, because of the Plaintiff's race and non-union status. The Court most scrutiningly wrote, in the case of Howard:

> "Howard is a close corporation, apparently wholly owned by Blanheim and operated by him, as owner. To deal with Howard is, practically speaking, to deal with Blanheim." 516 F Supp. at 513.

In accordance to this rule: to deal with the Corporation, is to deal with the Appellant, individually, first, where the causes of actions alleged are based on the race of the Plaintiff-Appellant. Howard vs. Johns Hopkins Hospital; 516 F. Supp. at 513, (1981)

> "When a court considers a motion to dismiss for want of standings, the court must accept, as true, all material allegations of the complaint, and must construe the complaint, in favor of the complaining party". Warth vs. Seldin, 422 US At 501 95 S Ct 40.

APPENDIX C

PETITIONER PRO SE (PROPOSED) AMENDED COMPLAINT'S TITLE, JURISDICTION, AND AD DAMNUM , REQUESTING CLASS ACTION STATUS SUBMITTED BELOW, IN OCTOBER, 1982

file
WLJ/rm 10/7/82

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

WALTER L. JONES
via Assignment of Claim and Cause of Action from
WALTER L. JONES DEVELOPMENT CORPORATION INC.
86 Cornell Avenue
Amherst, New York 14226
Plaintiff,

PROPOSED
AMENDED COMPLAINT
"CLASS ACTION"
CIV 80-1075E

-against-

NIAGARA FRONTIER TRANSPORTATION AUTHORITY (NFTA)
and
WILLIAM E. STRAUB, TIMOTHY TOOHEY, JAMES H. WOLFORD, GEORGE L. WESSELL, RICHARD SOUTHARD, WILLIAM G. GISEL, JOHN F. KOPCYZNSKI, WILLIAM H. WENDEL, TED BECK, CHESTER R. HARDT, GEORGE J. TRIMPER, ALFONSO V. BELLANCA, JACK BAYER, JACOB F. SCHOELLKOPF V., JAMES E. KELLY, KENNETH G. KNIGHT, ERNESTINE R. GREEN, RICHARD J. ANTHONY, ROBERT D. GIOIA, JAMES M. WADSWORTH, RICHARD F. GALLAGHER, JOHN F. DOWNING, WILLIAM BULOW, (Officials and Employees).
181 Ellicott Street
Buffalo, New York 14205
NFTA and Officials and Employees
Defendants,

-and-

URBAN MASS TRANSPORTATION ADMINISTRATION (UMTA)
and
HIRAM J. WALKER, BROCK ADAMS, ROBERT PATRICELLI, JOSE CAMALLONGA,
RICHARD S. PAGE, HAROLD B. WILLIAMS, WESLEY A. PLUMMER, WILHELMENIA BURKE, ARTHUR B. TEELE, ANDREW LEWIS, (Officials and Employees)
400 Seventh Street SW
Washington, D.C. 20590

UMTA and Officials and Employees,
Defendants,

-and-

SIEGFRIED CONSTRUCTION CO., INC. (Contractor)
and
NEAL CAVANAUGH, JOSEPH DIPIRRO Officials
One Towne Centre-Audubon
Amherst, New York 14228

Contractor and Officials
Defendants,

-and-

SLATTERY ASSOCIATES, INC. (Contractor) and
JOHN SANDERS (Official)
46 Fifty-fourth Road
Maspeth, New York 11378

Contractor and Official
Defendants,

-and-

HERBERT F. DARLING, INC., (Contractor), and
HERBERT F. DARLING, JR., (Official)
131 California Drive
Williamsville, New York 14221

Contractor and Official,
Defendants,

-and-

JOHN W. COWPER CO., INC., (Contractor) and
IRVING FRANCIS, WARREN STRONG, (Official)
4246 Ridge Lea Road
Amherst, New York 14240

Contractor and Officials
Defendants,

-and-

FRUIN COLNON/TRAYLOR BROS., INC., (Contractor)
and
S.H. BARTHOLOMEW, TOM TRAYLOR - (Officials) and

OYNX CONSTRUCTION & EQUIPMENT CO., (Contractor)
and

WILLIAM STERLING - (Official)
RONALD M. FINO - (Union Official)
1706 Olive Street
St. Louis, Missouri 33103

Contractors and Officials and
Union Official
Defendants,

-and-

ALBERT ELIA BUILDING COMPANY INC., (Contractor)
and
ALBERT ELIA, LAWRENCE A. ELIA (Officials)
2749 Lockport Road
Niagara Falls, New York 14302

Contractor and Officials
Defendants,

-and-

S & M CONSTRUCTORS INC., (Contractor) and
VICTOR SCARAVILLI, VINTON GABESI, (Officials)
P.O. Box 508 Buffalo, New York 14215

Contractor and Officials,
Defendants,

-and-

AFL-CIO COUNCIL and
GEORGE L. WESSEL (Official)
686 Ellicott Suare Building
Buffalo, New Yorkk 14203

Council and Official
Defendants

-and-

CONSTRUCTION INDUSTRY COALITION FOR ECONOMIC
RECOVERY WESTERN NEW YORK (Coalition) and
BERNARD J. SHEVLIR, DONALD J. BLAIR (Official)
1150 Wherle Drive
Williamsville, New York 14221

Coalition and Officials,
Defendants,

-and-

CONSTRUCTION INDUSTRY EMPLOYEES ASSOCIATION, INC,
(Association, and
JOHN M. FUHRMANN, ROBERT R. LOGAN (official)
625 Ensminger Road
Tonawanda, New York 14150

Association and Official
Defendants,

-and-

NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION INC.,
(Association) and
LAWRENCE J. STROHT (Official)
361 Delaware Avenue
Buffalo, New York 14202

Association and Official,
Defendants,

-and-

PLUMBING CONTRACTORS ASSOCIATION OF ERIE COUNTY,
NY INC
(Association), and
FRANK A. SCIBETTA (Official)
282 Delaware Avenue
Buffalo, New York 14202

Association and Official
Defendants,

-and-

MECHANICAL CONTRACTORS ASSOCIATION OF BUFFALO
&
VICINITY, INC., (Association) and
MARSHALL DAVIS (Official)
374 Delaware Avenue
Buffalo, New York 14202

Association and Official
Defendants,

-and-

WESTERN NEW YORK DUMP TRUCK OPERATORS
ASSOCIATION (Association) and
LESLIE A. SPRAGGON (Official)

Association and Official
Defendants.

-and-

BOILER MAKERS EMPLOYERS ASSOCIATION OF BUFFALO,
NEW YORK & VICINITY (Association) and
LOUIS D. MADIA, (Official)

Association and Official,
Defendants,

-and-

GREATER BUFFALO SHEET METAL & ROOFING ASSOCIATION,
(Association) and
PAUL GILBERT (Official)
961 A Maryvale Drive
Cheektowaga, New York 14225

Association and Official
Defendants,

-and-

ASBESTOS WORKERS LOCAL UNION NO. 4 (Union) and
JACK KELLEHER (Official)

186 Washington Highway
Snyder, New York 14226

Union and Official
Defendants,

-and-

BOILER MAKERS LOCAL UNION NO. 7 (Union) and
JOHN BARRY JARZYNSKI - (Official)
196 Orchard Park Road
W. Seneca, New York 14224

Union and Official
Defendants,

-and-

BRICKLAYERS LOCAL UNION NO. 45 (Union), and
JAMES JOSEPH McGOVERN - (Official),
1807 Elmwood Avenue
Buffalo, New York 14207

Union and Official,
Defendants,

-and-

CARPENTERS DISTRICT COUNCIL OF BUFFALO & VICINITY,
(Union), and
HERMAN F. BODEWES - (Official)
300 Kensington Avenue
Buffalo, New York 14214

Union and Official,
Defendants

-and-

CEMENT MASONS LOCAL UNION NO. 511 (Union) and
LEONARD S. CONIGLIO (Official
1685 Elmwood Avenue
Buffalo, New York 14207

Union and Official,
Defendants,

-and-

ELECTRICAL WORKERS LOCAL UNION NO. 41 (Union)
and
MELBOURNE H. RICE (Official)
S 3564 California Road
Orchard Park, New York 14127

Union and Official,
Defendants,

-and-

ELEVATOR CONSTRUCTORS LOCAL NO. 14 (Union) and
DONALD M. WINKLE - (Official)

1660 Kenmore Avenue
Buffalo, New York 14216

Union and Official
Defendants,

-and-

GLAZIERS LOCAL UNION NO. 660 (Union), and
JAMES J. COYLE, (Official)
2175 William Street
Buffalo, New York 14206

Union and Official,
Defendants,

-and-

IRONWORKERS LOCAL UNION NO. 6 (Union), and
JOSPEH F. COLERN, (Official)
196 Orchard Park Road
W. Seneca, New York 14224

Union and Official
Defendants,

-and-

LABORERS LOCAL UNION NO. 210 (Union) and
RONALD M. FINO, (Official)
481 Franklin Street
Buffalo, New York 14202

Union and Official
Defendants,

-and-

LATHERS LOCAL UNION NO. 32 (Union), and
FRANK A. SCIABARRASI (Official)
96 Dewitt Street
Buffalo, New York 14213

Union and Official,
Defendants,

-and-

OPERATING ENGINEERS LOCAL NO. 17 (Union) and
LEO HOPKINS (Official)
150 Commerce Parkway
W. Seneca, New York 14224

Union and Official,
Defendants,

-and-

PAINTERS DISTRICT COUNCIL NO. 4 (Union) and
JIM V. GRIFFO (Official)
12 Elmwood Avenue
Buffalo, New York 14210

Union and Official,
Defendants,

-and-

PLASTERERS LOCAL UNION NO. 8 (Union) and
SAMUEL F. ANTONIO (Official)
1373 E. Robinson
N. Tonawanda, New York 14120

Union and Official,
Defendants,

-and-

PLUMBERS LOCAL NO. 36 (Union) and
LARRY CONNELLY (Official)
175 GreatArrow Avenue
Buffalo, New York 14207

Union and Official,
defendants,

-and-

ROOFERS LOCAL UNION NO. 74 (Union) and
ANGELO PAGANO (Official)
770 Maryvale Drive
Buffalo, New York 14225

union and Official,
Defendants,

-and-

SHEET METAL WORKERS LOCAL UNION NO. 71 (Union)
and
GEORGE J. CUDDIHY (Official)
770 Maryvale Drive
Buffalo, New York 14225

Union and Official
Defendants,

-and-

SPRINKLER FITTERS LOCAL UNION NO. 703 (Union) and
WILLIAM G. THOMPSON, (Official)
198 Tim Tom Terrace
W. Seneca, New York 14224

Union and Official
Defendants,

-and-

STEAM FITTERS LOCAL UNION NO. 395 (Union) and
DONALD J. BLAIR, (Official)
175 Great Arrow Drive
Buffalo, New York 14207

Union and Official
Defendants,

-and-

TILE, MARBLE & TERRAZZO WORKERS HELPERS LOCAL
UNION NO. 8
(Union) and
DANIEL J. MECCA, (Official)
1283 E. Delevan Avenue
Buffalo, New York 14215

Union and Official
Defendants,

-and-

TRUCK DRIVERS LOCAL UNION NO. 449 (Union), and
ERWIN M. WALKER (Official)
1685 Elmwood Avenue
Buffalo, New York 14207

Union and Official,
Defendants.

JURISDICTION AND VENUE

1. In this action for declaratory relief and demands to redress the deprivation of rights secured to the Plaintiff and others by UMTA Circular 1165.1, 49 CFR 23, and as amended, Title 49 Transportation Part 23, Executive Order 11246 as amended (30 FRCP 12319), 42 USCA §2000(e) note, 42 USCA § 1981, 42 USCA § 1983, 5 USCA § 553, §1 Civil Rights Act of 1871, Title VI Civil Rights Act of 1964, 42 USC § 2000 et. seq., 40 USC § 471, 483(a), 42 USC § 6705(f) 2, 28 USC § 1331, United States Constitutional Amendments 5 and 14, 28 USC § 1343(3), 49 USC § 1604(1), Urban Mass Transportation Act of 1964, § 19 (Public law 95-599), 42 USCA § 1985.

2. This Court's jurisdiction is invoked, pursuant to Sections 1331 and 1343 of the Federal

Rules of Civil Procedure, including Rule 23, to redress deprivation of Plaintiff's (and others') protected Civil and Constitutional Rights, through Defendants collectively violating UMTA Circular 1165.1 as amended to 49 CFR 23, and Title 49 Transportation Part 23, et al., as stated above; which mandates Affirmative Action to encompass bona fide MINORITY BUSINESS ENTERPRISES, (hereinafter "MBE"s), in all phases of all Federal DOT funded construction contracts of the same geographical areas, as the Project, pursuant to 42 USCA Section 2000(e) note, Section 2000(d), et seq., Executive Order 11246, et al. Plaintiff invokes the Court's jurisdiction, pursuant to the 5th and 14th Amendmends of the US Constitution: 42 USCA Section 1983 - providing the Redress of Civil Rights denied an individual on the basis of Race, Color, National Origin, Class, etc., under the color of State Law, Regulations, Agreements, Custom or Usage; 42 USCA Section 1985 - which provides relief from Conspiracy to deprive persons of their Civil Rights. Jurisdiction of this Court is further invoked by all

of the above - cited Statutes.

3. The flagrant coercive violation of the above Laws are continuing, to date, within the Western District of the State of New York, and effectively depriving the Plaintiff (and others) of his (and their) protected Civil and Constitutional Rights to participate in the building of the Buffalo LIGHT RAIL RAPID TRANSIT, (hereinafter "LRRT") System.

WHEREFORE, Plaintiff prays for a Judgement against Defendants, and each of them, as follows:

1. For a Declaratory Order establishing the rights, duties, responsibilities and liabilities of the parties under the Federal Statutory Mandated Requirement of UMTA Circular 1165.1 as amended to 49 CFR 23, Title 49 Transportation part 23, et al.

2. For Compensable Damages, including gross profits, and special and general damages in the amount of Seventeen Million ($17,000,000.00) Dollars against all Defendants, and each of them.

3. For an Assignment of Punitive Damages in the amount of Fifty Million ($50,000,000.00) Dollats against all Individual Defendants and Defendants COALITION, ASSOCIATIONS, UNIONS and CONTRACTORS.

4. For an Order designating this action a Class Action, establishing a time period for other affected individuals and MBEs of Plaintiff's class to join this action through their attorneys and/or pro se.

And for such other and further relief as this Court deems just, equitable and proper.

DATED:

WALTER L. JONES
Attorney Pro se
POST OFFICE ADDRESS
86 Cornell Street
Amherst, New York 14226
Telephone: (716) 854-8526

TO: NFTA, et al

APPENDIX D

PETITIONER'S PRESENT (PROPOSED AMENDED AND SUPPLEMENTAL COMPLAINT DATED SEPTEMBER 6, 1988

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

WALTER L. JONES, PRO SE

Plaintiff

-vs-

(PROPOSED) AMENDED AND SUPPLEMENTAL COMPLAINT CIVIL #80-1075E

NIAGARA FRONTIER TRANSPORTAION AUTHORITY, (NFTA), and ITS OFFICERS AND ADMINISTRATORS,

WILLIAM E. STRAUB, TIMOTHY TOOHEY, JAMES H. WOLFORD, GEORGE WESSEL, RICHARD C. SOUTHARD, JOHN F. DOWNING, WILLIAM G. GISEL, JOHN P. KOPCZYNSKI, WILLIAM H. WENDEL, JACK BAYER, ROBERT DRACUP, CHESTER R. HARDT, GEORGE H. TRIMPER, ALPHONSE V. BELLANCA, ERNESTINE R. GREEN, JACOB F. SCHOELLKOPF, V., JAMES E. KELLY, KENNETH G. KNIGHT, WILLIAM BULOW, ROBERT D. GIOIA, RONALD J. ANTHONY, RICHARD F. GALLAGHER, THEODORE BECK,

and

NEW YORK STATE DEPARTMENT OF TRANSPORTATION, (NYS DOT), and ITS OFFICERS AND ADMINISTRATORS,

and

WILLIAM HENNESSEY and HOWARD SCHAFFEY

and

URBAN MASS TRANSPORTATION ADMINISTRATION (UMTA), and ITS OFFICERS AND ADMINISTRATORS

HIRAM J. WALKER, BROCK ADAMS,
ROBERT PATRICELLI, JOSE CAMALLONGA,
RICHARD S. PAGE, HAROLD B. WILLIAMS,
WESLEY A. PLUMBER, WILHEMENIA BURKE,
ARTHUR B. TEELE, ANDREW LEWIS,

and

MARINE MIDLAND BANK, N.A., as
EXECUTORS and REPRESENTATIVES OF THE
ESTATE OF CORNELIUS J. CAVANAUGH,
JOSEPH DiPIRRO, and SIEGFRIED CONSTRUCTION
CO., INC.

and

JOHN J. SANDERS, and
SLATTERY ASSOCIATES, INC.,

and

IRVING FRANCIS, GERALD MILLER, and
JOHN W. COWPER CO., INC.

S. H. BARTHOLOMEW and FRUIN-COLNIN,
TOM TRAYLOR, TRAYLOR BROS., and
RONALD M. FINO, WILLIAM STERLING,
THOMAS T. GIAMMARESI, CARL J. MASTYKARZ,
and ONYX CONSTRUCTION & EQUIPMENT CO.

and

JOHN M. FUHRMANN and THELMA A. LOGAN,
as EXECUTORS and REPRESENTATIVES of
the ESTATE OF ROBERT P. LOGAN, and
CONSTRUCTION INDUSTRY EMPLOYERS ASSOCIATION,

and

DONALD BLAIR, and BUILDING TRADES COUNCIL
OF BUFFALO AND VICINITY,

and

RONALD M. FINO, and
LABORS LOCAL UNION NO. 210

JOSEPH F. COLERN, and MICHAEL FITZPATRICK, and IRONWORKERS LOCAL UNION NO. 6

and

LEONARD S. CONIGLIO, and CEMENT MASONS LOCAL UNION NO. 511

and

HERMAN F. BODEWES, and CARPENTERS DISTRICT COUNCIL,

and

LEO HOPKINS, and OPERATING ENGINEERS LOCAL UNION NO. 17, 17A and 17B,

and

LAWRENCE J. STROH, and NATIONAL ELECTRICAL CONTRACTORS' ASSOCIATION, WESTERN NEW YORK CHAPTER,

and

FRANK A. SCIBETTA, PLUMBING CONTRACTORS ASSOCIATION OF ERIE COUNTY, NY., INC.,

and

ALBERT ELIA, JR., ALBERT ELIA, III, ARTHUR ELIA, ALFRED ELIA, ALAN ELIA, DAVID ELIA, LAWRENCE A. ELIA, WILLIAM J. McDERMOTT, and ALBERT ELIA BUILDING COMPANY,

and

VICTOR SCARAVILLI, and S & M McHUGH/KENNY

and

JOHN DenBESTE, ELTON T. GRANT, and S & M CONSTRUCTORS, INC.,

and

GEORGE WESSEL, and AFL-CIO COUNCIL,

and

BERNARD J. SHEVILIR, DONALD BLAIR, and CONSTRUCTION INDUSTRY COALITION FOR ECONOMIC RECOVERY, WESTERN NEW YORK (COALITION),

and

SAMUEL D. MAGAVERN and SUZANNE C. DAVIS, as EXECUTORS and REPRESENTATIVES of the ESTATE of the late MARSHALL DAVIS, and MECHANICAL CONTRACTORS ASSOCIATION OF BUFFALO AND VICINITY, ETC.,

and

LOUIS MADIA, and BOILER MAKERS EMPLOYERS ASSOCIATION OF BUFFALO & VICINITY, ETC.,

and

PAUL GILBERT and GREATER BUFFALO SHEET METAL & ROOFING ASOCIATION,

and

JACK KELLEHER and ASBESTOS WORKERS LOCAL UNION NO. 4

and

JOHN BARRY JARZYNSKI and BOILER MAKERS LOCAL UNION NO. 7

and

JAMES JOSEPH McGOVERN, and BRICKLAYERS LOCAK UNION NO. 45

and

MELBOURNE H. RICE, and ELECTRICAL WORKERS LOCAL UNION NO. 41

DONALD M. WINKLE, and ELEVATOR CONSTRUCTION LOCAL UNION NO. 14

and

JAMES J. COYLE, and GLAZERS LOCAL UNION NO. 660

and

FRANK A. SCIABARRASI, and LATHERS LOCAL UNION NO. 32,

and

JIM V. GRIFFO, and PAINTERS DISTRICT COUNCIL NO. 4

and

SAMUEL F. ANTONIO, and PLASTERERS LOCAL UNION NO. 9

and

ANGELO PAGANO, and ROOFERS LOCAL UNION NO. 74

and

GEORGE J. CUDDIHY and SHEET METAL WORKERS LOCAL UNION NO. 71,

and

DANIEL J. MECCA, and TILE, MARBLE & TERRAZO WORKERS HELPERS LOCAL UNION NO. 8

and

ERWIN M. WALKER and TRUCK DRIVERS LOCAL UNION NO. 449

and

LARRY CONNELLY and PLUMBERS LOCAL UNION NO. 36

DONALD J. BLAIR, and STEAMFITTERS LOCAL UNION NO. 395

and

LESLIE A. SPRAFFON, and WESTERN NEW YORK DUMP TRUCK OPERATORS ASSOCIATION,

and

OSCAR RAYFORD, and UNIVERSAL SUPPLY EQUIPMENT CONSTRUCTION CO.,

and

EDWARD COLE, and TRESCO DISTRIBUTORS,

and

CARMEN A. GALLO and AMIGA CONSTRUCTION

and

EMANUEL HUMES and HUMES CONTRACTING CO.

and

EMANUEL HUMES INDUSTRIAL ELECTRIC

and

JOSEPH MYLES and TRASH LAND TRUCKING

and

ROBERT CHESTER and KEYSTONE STEEL

and

ROBERT L. PITTS and P & S SUPPLY

and

JAMES LYLES and L & W CONCRETE

and

DeVILUS GRAY and AFTCO INTERNATIONAL TRADING CO.

PAUL HARRISON and DOWNTOWN DUMP TRUCK SERVICE

and

DEAN WILLIAMS and NATIVE AMERICAN CONSTRUCTION COMPANY

and

WILLIAM TABORN and NELSON PETERS ASSOCIATES

and

WASHINGTON BENNETT, WHITWORTH FERGUSON, JR.,
and
FERGUSON-BENNETT CO., INC.

and

GLEN CLAYTOR, FRANK J. McGUIRE,
and
CCC/IPPL

Defendants

SECTION I

Plaintiff, WALTER L. JONES, Pro se for himself, as a black, natural person, the sole shareholder of WALTER L. JONES DEVELOPMENT CORPORATION, INC., a Minority Business Enterprise, (MBE),

merged and supplemental claims against the defendants, and each of them, complain

and upon information and belief, allege the following:

SECTION II

JURISDICTIONAL STATEMENT

1. Plaintiff, JONES, and his wholly owned corporation, and the defendants are all citizens, private entities and/or agencies of the United States of America who reside and/or did business in the City of Buffalo, New York, where the claims herein alleged arose, within the judicial District of Western New York. The Court has jurisdiction and venue under Sections 1331, 1332(A)(1), 1337, 1343(A)(1)(2)(3)(4), 1346(B), 1357, 1391(B)(C)(E).

2. This action arises under the Fifth, Thirteenth and Fourteenth Amendments as well as under the Civil Rights Act of

1866, Sections 1-10, 14 Statute 27; Civil Rights Act of 1871; Title VI of the Civil Rights Act of 1964, Sections 601, 602 and 603, under 78 Statute, 252,42 USC, 2000(d) to 2000.4; pub. L. 95 599; Urban Transportation Act of 1964, Section 314 as Amended 42 USC 1615 Section 19 Codified at 2000d, Title 49 CFR, DOT, Subtitle A.O.S., Part 21, as amended, DOT order 4000.7(a); UMTA. Circular 1165.1 as amended by Title 49 Section 23.1, et seq.; and under 42 USC 1981, 1983, 1985(3), 1986 and 1988.

SECTION III

PLAINTIFF'S COMPLIANCE WITH ADMINISTRATIVE PROCEDURES

Within 180 days after plaintiff JONES was initially deprived of the benefits of his statutory entitlements of which he complained, plaintiff, JONES, caused letters

of complaints to be forwarded to defendant, BROCK ADAMS, the Secretary of defendant - UMTA. Said letters are dated February 22, 1979, March 5, 1979, and May 17, 1979. On March 30, 1979, plaintiff JONES caused an additional complaint to be forwarded to defendant GARY GAYTON of defendant - UMTA; all complaining of racial discrimination and deprivation of his entitlement under Title VI in violation of his Civil and Constitutional rights by the concerted acts of NFTA's officials, and the White officials and/or representatives of the unions, associations, coalitions, and prime contractors herein named as defendants, all of which were responded to negatively. The District Court entered an Order in this case on October 7, 1981 determining that exhaustion of administrative remedies were unnecessary if the administsrative remedy is

inadequate to vindicate the complainants' rights, and that plaintiff's letters of 1979 to defendant UMTA officials, were official grievances for all practical purposes in this lawsuit.

SECTION IV

INTRODUCTORY STATEMENT

1. Based upon the glaring social and economical plight of Negroes (Blacks) within the United States of America caused by historic race discrimination, Congress enacted the Civil Rights Act of 1964 in order to provide political, economical and social equality for persons of minority groups within the United States of America, (the "Civil Rights Act of 1964"), Pub. L., No. 88-352, 78 Stat. 252, codified at 42 USC, 2000d, et seq. (hereinafter the "ACT").

2. Congress further created the Urban Mass Transportation Administration Act of 1964 in order to provide employment and business opportunities for the benefit of minority persons through their business enterprises within the United States of America. (The Urban Mass Transportation Act of 1964) Section 12(1) as amended, 49 USC, 1608 (f), as amended by Section 314, at 49 USC 1615, Section 19, Codified at 42 USC 2000(d), et seq. (hereinafter the "ACT").

3. The federal regulations created under the ACTS required all United States Government agencies to take affirmative action, to avoid racial and ethnic discrimination, and where possible, to make up for past discrimination by assisting socially and economically disadvantaged minority persons and their

valid MBE firms in order that they may participate to the "maximum extent" in "all phases" on projects that were funded by federal funds so that minority persons through their MBE firms could share in the salaries, equities, expenses, profits, dividends, and other benefits on projects administered by their respective governmental agencies.

4. Pursuant to the Congressional Federal Act and regulatory provisions set forth herein, defendant - NFTA's officers and administrators while participating in an unlawful scheme and conspiracy to use only white owned unionized construction firms to construct the Buffalo subway, made application to defendant -UMTA for a capital improvement grant which exceeded $430,000.000.00 for the constructing and

equipping of an underground subway system within the City of Buffalo.

5. Pursuant to the congressional federal "ACTS" and statutory regulatory provisions set forth herein, defendant - UMTA, while participating in an unlawful scheme and conspiracy to use only White owned unionized construction firms to construct the Buffalo Subway Construction Project, issued Circular 1165.1, dated December 30, 1977, which was amended by Title 49, dated March 30, 1980, requiring that any recipient receiving UMTA funds exceeding $1,000,000,00, to establish a written Minority Business Enterprise (MBE) Program, describing the "affirmative" steps that would be implemented to involve MBEs "in all phases"of the activities, as a binding condition of receiving the grant, and as a binding, contractural obligation under the "ACTS".

6. Defendant, NFTA's officers and administrators, while participating in the unlawful scheme and conspiracy to use only White, unionized constructions firms to construct the project, prepared and submitted its required written MBE Program Agreement to UMTA in 1978 as a condition for receiving the federal grant to construct the subway system in Buffalo, New York.

7. Section VIII of the MBE Program (agreement) provided under "Procedures to Ensure that MBEs will have an Equitable Opportunity", that "The Authority realizes that the mere setting of MBE goals will not ensure that MBEs have an equitable opportunity. To ensure that MBEs will have an equitable opportunity, the following affirmative actions-techniques will be implemented:"

a. "Developing bid packages and requests for proposals, so as to increase MBE participation."

b. "Designating facilities on the basis of MBE capabilities, and their bonding limits."

c. "Using MBEs in construction management contracts."

d. "Encouraging the formation of joint ventures among MBEs and between minority and majority firms."

e. "Considering purchasing supplies and/or leasing the required equipment for a job and then contracting only for the expertise required to perform the work."

f. "Providing specifications and RFPs in a timely manner to the minority entrepreneurial community."

g. "Establishing prorated payment and delivery schedules."

h. "Using the least complicated bid forms."

i. "Using restricted competitive negotiations, where appropriate and allowable."

j. "Holding pre-bid conferences to emphasize MBE requirements and explain the forms that must be submitted with the bid, regarding MBE participation, and documentation required, outlining efforts to obtain minority sub-contractors and joint venture partners, and the use and availability of the MBE directory."

The MBE Program further provided:

"The Authority, will assist MBEs in overcoming barriers to participate by the following means:"

a. "Coordination with financial institutions, insurance and bonding companies, and prime contractors to alleviate financial barriers faced by MBEs";

b. "Where feasible, NFTA will speed up payment schedules for MBEs to alleviate cash flow problems";

c. "Provide the opportunity for MBEs to review and evaluate successful bid documents of previous similar contracts";

d. "After bid openings, conduct debriefing sessions to point out specific reasons for unsuccessful bids";

e. "Through the MBE News Bulletin and other media, provide timely notice of projected procurement opportunities";

f. "NFTA will periodically conduct seminars and workshops to provide MBEs with instructions on job performance requirements, preparation of bid specifications, procurement policy, procedures and general bid requirements, as necessary".

8. Defendant NFTA's officers and administrators assured that it would take prompt measures necessary to effectuate the Agreements as the recipient, without limiting the aforementioned general assurances and gave the following additional specific assurances in its application which also bound the White benefit owners of the participating unionized contracting firms who were awarded contracts on the project.

A. "That the Recipient agrees that each "program" and each "facility" as defined in sub-sections 21.23(e) and 21.23(b) of the Regulations, will be (with regard to a "program") conducted, or will be (With regard to a "facility") operated in compliance with all requirements imposed by or pursuant to the Regulations."

B. "That the Recipient shall insert the following notification in all solicitations for bids for work or material, subject to the Regulations and made in connection with a project under the Urban Mass Transportation Act of 1964, as amended (the UMTA Act), and in adapted form, in all

proposals for negotiated agreements."

C. "The Recipient, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 USC 2000d to 2000-4, and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation issued pursuant to such ACT, hereby notifies all bidders that it will affirmatively insure that in regard to any contract entered into, pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation, and will not be discriminated against, on the grounds of race, color, sex or national origin, in consideration for an award."

D. "That the Recipient shall insert the clauses of Appendix A of this assurances in every contract subject to the ACT and the regulations."

E. "THIS ASSURANCE is given in considerations of and for the purpose of obtaining any and all Federal Grants, loans, contracts, property, discounts, or other federal financial assistance, extended after the date hereof to the Recipient, by the Department of Transportation, under the Federal

Urban Mass Transportation Programs, and is binding on it, other recipients, subgrantees, contractors subcontractors, transferees, successors in interest, and other participants in the Federal Urban Mass Transportation Program.

9. The Agreements and Commitments made in the MBE Program prepared and submitted by defendant NFTA's officers and administrators, and the Agreements and Commitments made by NFTA's officers and administrators in their applications to obtain the federal grants, was incorporated into and became a part of the Funding Agreement and Contract between defendants NFTA and UMTA, which was binding and applicable to all DOT assisted contracts advertised and let by the defendant - NFTA, after the approved date of the MBE Program under which the contracts were let on the Project.

10. Defendant NFTA's officers and administrators further provided in their Project Manuals for each Contract awarded on the Project the following requirements and assurances.

A. "It is mutually understood, and agreed, that the Contractors will attempt to utilize minority contractors, sub-contractors or sub-contractors to the maximum extent feasible." As used in this Contract, the term Minority Business Enterprise, means a business enterprise that is owned and controlled by one or more minority persons. The term, minority persons, means a person, who is Black, Hispanic, Asian American, American Indian, Alaskan, native, or a woman, regardless of race, or ethnicity. The phrase, "owned and controlled" as used in this definition, means a business which is (1) a sole proprietorship, legitimately owned by an individual who is a minority person, (2) a partnership or joint venture controlled by minority persons, and in which at least 51% of the beneficial ownership interests legitimately are held by minority persons, and in which at least 51% of the voting interests legitimately are held by minority persons."

B. The contract entered into by and between the successful bidder and the Authority is subject to the requirements of a financial assistance contract between the Authority, the U.S. Department of Transportation, and New York Stte. The contractor and his sub-contractors performing work at the job site will be required to comply with the safety and health regulations for construction 29 CFR Parts 1910 and 1916, the Davis-Bacon Act, the Contract Work Hours Standards, Title VI of the Civil Rights Act of 1964, as amended, UMTA Circular 1165.1, Presidential Executive Orders 11246 & 11265, DOT Order 4000.7A, and all other applicable Equal Employment Opportunity and Minority Business Enterprise laws, regulations, orders and guidelines; (emphasis added). The Authority hereby notifies all bidders that it will affirmatively ensure that with regard to any contract entered into pursuant to this advertisement for bids, opportunity for bids, opportunity to submit bids in response to this invitation and will not be discriminated against, on the grounds of race, religion, color, sex, or national origin, in consideration for an award."

11. That in accordance to the "ACTS" Statutes, Regulations, Programs, Agreements and Contracts, plaintiff JONES, who is Black, and a member of the protected class under the "ACTS" was entitled to participate, by mandate in accordance to his statutory entitlements under the "ACTS" and benefit from prime contracts low-bid by him on the federally funded Project through his non union "MBE" firm by being to the "maximum extent", assisted and awarded the low-bid prime contracts that were prepared and submitted to defendant NFTA by plaintiff JONES at scheduled bid openings.

12. That further, in accordance to the "ACTS", Statutes, Regulations, Programs, Agreements and Contracts, plaintiff JONES, as a member of the protected class under the "ACTS", was entitled to participate by mandate and benfit from the joint venture and/or sub contracts proposed by him on the federally funded Projects through his non

union MBE firm by being , to the "maximum extent", assisted and awarded the joint venture and/or sub contracts proposed to defendant White unionized contracting firms, officers and administrators.

13. That further, in accordance to the "ACTS", Statutes, Regulations, Programs, Agreements and Grant Contracts, plaintiff, JONES' MBE firm was certified by defendant NFTA as a valid "MBE" based upon plaintiff JONES' race and his ownership of the firm and based upon plaintiff, JONES and his firm, both being beneficiaries of the "ACTS" due to plaintiff JONES' race, social and economical status.

14. Nonetheless, the defendant NFTA's officers and administrators while acting in concert with all other defendants, under color, rejected each and every low bid

submitted by plaintiff JONES, and the defendants, White, unionized contracting firms, officers and administrators, while acting in concert with all other defendants, under color, rejected and/or ignored each sub-contract and/or joint venture proposal submitted by plaintiff JONES; all in violation of the "ACTS", Statutory, and Regulatory provisions as set forth in Section IV herein, and in furtherance of the conspiracy to deprive plaintiff JONES of the benefit of his and his firm's statutory entitlements, and allow for White persons to obtain the experiences, salaries, equities, dividends, profits and other benefits earmarked for the benefit of minority persons through their valid MBE firms on the federally funded Buffalo Subway Construction Project.

SECTION V

1. That at all times material to this merged Amended and Supplemental Complaint, the defendant, URBAN MASS TRANSPORTATION ADMINISTRATION (hereinafter UMTA), and its individual officials and administrators are a United States Government Agency and a part of the United States Department of Transportation (hereinafter DOT). Defendant UMTA was responsible for administering the URBAN MASS TRANSPORTATION ACT OF 1964, As Amended 49 U.S.C. 1601-1615) under the Capitals Facilities Grant and Loan Program, and other programs, and to disburse federal funds to state and local agencies, and for the enforcement of the Regulatory and Statutory provisions under the "ACTS".

2. The defendant, NFTA and its individual officials, Board of Commissioners and administrators are a New York State

public benefit corporation established in 1967, under the New York State Public Authorities Law. Defendant had the power to enter into contracts under the "ACTS" with defendants UMTA, as agent and fiduciary for the United States Government.

3. Defendant NEW YORK STATE DEPARTMENT OF TRANSPORTATION (hereinafter NYS DOT) and its individual administrators are a New York State agency who jointly funded and administered the Buffalo Subway Construction Projects within the City of Buffalo under the "ACTS" and Regulatory provision as joint fiduciaries under the "ACTS".

4. Defendants NFTA and NYS DOT its officers and administrators, did, in the implementation of their plans to obtain a federal capital improvement grant from defendant UMTA via DOT for the construction of an underground subway system within the

City of Buffalo, while acting in concert with all other defendants, under color, entered into an unlawful, monopolistic, discriminatory conspiracy to use only white owned contracting firms with the aid of minority "front" impostering supply and construction firms to construct the federally funded subway construction project in furtherance of the unlawful scheme and conspiracy to allow White persons and their firms to obtain the salaries, experiences, equities, dividends and profits earmarked for the benefit of minority persons through their valid MBE firms on the federally funded Buffalo Subway Construction Project.

5. The defendant NFTA commenced the alleged unlawful conspiracy by obtaining, on behalf of defendant UMTA, a monopolistic, discriminatory statement/agreement dated May 15, 1976 from the White individuals named in

Section XI herein, who would be involved in the construction of the Project as the "Western New York Construction Industrial Coalition for Economic Recovery" (hereinafter defendant COALITION).

6. The statement/agreement provided that should the Project be approved and funded, the defendant COALITION would serve as the Advisory Committee to work with defendant UMTA and defendant NFTA, to complete the Project.

7. The statement/agreement further provided that the defendant COALITION would be fully responsive and responsible for their commitment, and assured that there would be no work stoppages, nor lock-outs during the terms of the Project.

8. The defendants, NFTA, NYS DOT and UMTA in furtherance of the conspiracy to use only White owned unionized contracting firms and minority "fronts" firms to construct the Project, arbitrarily and capriciously obtained the statement/agreement from the all White COALITION membership, acting through their individual White officers and/or business representatives, with clear knowledge that the defendant COALITION White members had and would continue to ratify labor agreements with White persons who owned participating construction firms that contained unconstitutional sub-contract provisions which would exclude and deprive plaintiff JONES and his non-union MBE contracting firm of their statutory entitlements in violation of their civil and constitutional rights to participate on the federally funded Buffalo

Subway Construction Project causing plaintiff JONES, as the sole beneficiary of his MBE firm to be humiliated, embarrassed and injured, economically and to suffer severe mental and emotional distresses.

SECTION VI

PLAINTIFF PARTY

That at all times material to this merged Amended and Supplemental Complaint, plaintiff JONES is a Black male (Negro) of American citizenship and a member of the protected class under the statutory, constitutional and regulatory provisions as set forth in Section IV herein, who is the sole stockholder and sole beneficiary of his corporation, a "non-union" "MBE" construction development and general firm, which was organized under the laws of the State of New York, and defined as a Minority Business Enterprise (MBE) under federal statutes and

regulations due to plaintiff JONES' individual racial origin, economical and social status who was arbitrarily, capriciously and maliciously denied mandated assistance and low bid contracts by defendant NFTA's officers and administrators acting in concert with the other defendants. Plaintiff JONES was further arbitrarily, capriciously, willfully, intentionally, purposefully and maliciously denied mandated assistance and proposed sub-contracts and/or joint venture contracts by the White individual defendants who owned unionized contracting firms while acting in concert with the other defendants on the federally funded Buffalo Subway Construction Project.

SECTION VII

DEFENDANTS PARTIES

That at all times material to this merged Amended and Supplemental Complaint, defendants, NIAGARA FRONTIER TRANSPORTATION

AUTHORITY (hereinafter NFTA), its individual legal advisors, Board of Commissioners, Executive Officers, Administrators and their successors, WILLIAM E. STRAUB, TIMOTHY TOOHEY, JAMES H. WOLFORD, GEORGE L. WESSEL, RICHARD C. SOUTHARD, JOHN F. DOWNING, WILLIAM G. GISEL, JOHN F. KOPCZYNSKI, WILLIAM H. WENDEL, JACK BAYER, CHESTER R. HARDT, GEORGE J. TRIMPER, ALFONSE V. BELLANCA, ERNESTINE R. GREEN, JACOB B. SCHOELLFOPF, C., JAMES E. KELLY, KENNETH G. KNIGHT, WILLIAM BULOW, ROBERT D. GIOIA, RONALD J. ANTHONY, RAYMOND F. GALLAGHER, ROBERT DRACUP and THEODORE BECK, are a local public entity and a fiduciary of the United States, coordinating transportation for Western New York, as authorized under New York State Law, who was the recipient of a federal and state grant in the approximate amunt of $535,000,000. (five hundred thirty five million) dollars from defendant UMTA and defendant NYS DOT, to

build a subway system in Buffalo, New York, by agreeing to the statutory and regulatory provisions, as set forth in Section IV herein, who, in concert with all other defendants named herein, arbitrarily, capriciously, willfully, intentionally, purposefully, and maliciously breached their fiduciary agreement and rejected each and every low bid and request for assistance prepared, and submitted by plaintiff JONES, all in violation of the "ACTS", statutory and regulatory provisions, as set forth in Section IV herein, and in breach of their fiduciary agreement as set forth under Section IV herein in furtherance of the conspiracy to deprive plaintiff JONES of the benefit of his and his MBE firm's statutory entitlements under Title VI on the federally funded Buffalo Subway Construction Project in violation of his civil and constitutional

rights as the owner of his MBE contracting firm. These unlawful acts allowed for White persons and their firms to obtain salaries, dividends, experiences, equities, profits and other benefits earmarked for the benefit of minority persons through their valid MBE firm's participation on the federally funded Buffalo Subway Construction Project.

SECTION VIII

DEFENDANT PARTIES

That at all times material to this merged Amended and Supplemental Complaint, the defendants, URBAN MASS TRANSPORTATION ADMINISTRATION (hereinafter UMTA), its officials, administrators and successors, HIRAM J. WALKER, BROCK ADAMS, ROBERT PARTICELLI, JOSE COMALLONGA, RICHARD S. PAGE, HAROLD B. WILLIAMS, WESLEY A. PLUMBER, WILHELMINA BURKE, ARTHUR B.TEELE, ANDREW LEWIS, is a division and fiduciary agency of the United States of

America, Department of Transportation, under the Urban Mass Transportation Act of 1964, who funded 80% of the Buffalo Subway Construction Project, who agreed as the fiduciary to enforce the statutory and regulatory provisions as set forth in Section IV herein, who, in concert with all other defendant named herein, arbitrarily and capriciously ignored and breached their fiduciary agreement and denied all mandated enforcement assistance requested by plaintiff JONES in furtherance of the conspiracy.

SECTION IX

DEFENDANT PARTIES

That at all times material to this merged Amended and Supplemental Complaint, the defendants, URBAN MASS TRANSPORTATION ADMINISTRATION (hereinafter UMTA), its

officials, administrators and successors, HIRAM J. WALKER, BROCK ADAMS, ROBERT PARTICELLI, JOSE COMALLONGA, RICHARD S. PAGE, HAROLD B. WILLIAMS, WESLEY A. PLUMBER, WILHELMINA BURKE, ARTHUR B. TEELE, ANDREW LEWIS is a division and fiduciary agency of the United States of America, Department of Transportation, under the Urban Mass Transportation "ACT" of 1964, who funded 80% of the Buffalo Subway Construction Project who agreed as the fiduciary to enforce the statutory and regulatory provisions as set forth in Section IV herein, who, in concert with all other defendants named herein arbitrairly and capriciously ignored and breached their fiduciary agreement and denied all mandated enforcement assistance requested by plaintiff JONES in furtherance of the conspiracy.

SECTION IX

DEFENDANT PARTIES

That at all times material to this merged Amended and Supplemental Complaint, the defendants, NEW YORK STATE DEPARTMENT OF TRANSPORTATION (hereinafter NYS DOT) and its executive officers and administrators, WILLIAMS C. HENNESSEY and HOWARD SCHAFFEY, is a division and agency of New York State and a fiduciary of the United States who funded 20% of the Buffalo Subway Construction Project under the Urban Mass Tansportation Act of 1964 and agreed to jointly administer the project and to enforce the statutory and regulatory provisions as set forth in Section IV herein who in conert with all other defendants named herein arbitrarily and capriciously ignored and breached their fiduciary agreement and made no effort to enforce the "ACTS" statutory and regulatory provisions

as set forth in Section IV herein, on behalf of plaintiff JONES in furtherance of the conspiracy.

SECTION X

DEFENDANT PARTIES

That at all times material to this merged Amended and Supplemental Complaint, defendant contractors and their respective White officers, administrators and executors, MARINE MIDLAND BANK, N.A., as executors and representatives of the estate of the late CORNELIUS J. CAVANAUGH, JOSEPH DiPIRRO and SIEGFRIED CONSTRUCTION CO., INC.; JOHN J. SANDERS and SLATTERY ASSOCIATES, INC.; IRVING FRANCIS, GERALD MILLER and JOHN W. COWPER CO., INC.; S. H. BARTHOLOMEW, and FRUIN-COLNON, TOM TRAYLOR and TRAYLOR BROS., RONALD M. FINO, THOMAS D. GIAMMARESI, CARL J. MASTYKARZ, WILLIAMS STERLING and ONYX CONSTRUCTION & EQUIPMENT CO.; ALBERT ELIA, JR., ALBERT ELIA, III, ARTHUR ELIA,

ALFRED ELIA, ALAN ELIA, DAVID ELIA, LAWRENCE ELIA, and WILLIAMS J. McDERMOTT, and ALBERT ELIA BUILDING CO., INC.; JOHN DenBESTE, ELTON T. GRANT and S & M CONSTRUCTORS, INC.; VICTOR SCARAVILLI, and S & M /McHUGH & KENNY are White individuals and unionized White owned prime contracting firms and sub-fiduciaries of the United States, who were awarded major prime contracts by the defendant, NFTA's Board of Commissioners on the federally funded Buffalo Subway Construction Project, and who, in concert with all other defendants named herein arbitrarily and capriciously awarded the majority of their purported sub and supply contracts to minority "fronts" firms in furtherance of the conspiracy to deprive plaintiff JONES of the benefit of his and his MBE firm's statutory entitlements under Title VI in violation of his civil and constitutional rights as the

benefit owner of his non-union MBE contracting firm; all for the purposes of allowing and providing for White persons and their firms to obtain the salaries, dividends, expenses, equities, profits and other benefits earmarked for the benefit of minority persons through their valid MBE firms on the federally funded Buffalo Subway Construction Project, all in violation of the ACTS, statutory and regulatory provisions and their fiduciary agreements as set forth in Section IV herein.

SECTION XI

DEFENDANTS PARTIES

That at all times material to this merged Amended and Supplemental Complaint, defendants, council, associations, unions and their authorized White officers and/or representatives ROBERT R. LOGAN, JOHN A. FUHRMANN and CONSTRUCTION INDUSTRY EMPLOYERS ASSOCIATION; GEORGE WESSEL, and AFL-CIO COUNCIL; RONALD M. FINO and LABORERS LOCAL

UNION NO. 210; JOSEPH F. COLERN, MICHAEL FITZPATRICK and IRON WORKERS LOCAL UNION NO. 6; LEONARD S. CONIGLIO, and CEMENT MASONS LOCAL UNION NO. 511; HERMAN F. BODEWES and CARPENTERS DISTRICT COUNCIL; LEO HOPKINS and OPERATING ENGINEERS LOCAL UNION NO. 17, 17A and 17B: LAWRENCE J. STROH and NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION, W.N.Y. CHAPTER; FRANK A. SCIBETTA and PLUMBING CONTRACTORS ASSOCIATION OF ERIE COUNTY, N.Y., INC.; BERNARD J. SHEVLIR, DONALD J. BALIR and WESTERN NEW YORK CONSTRUCTION INDUSTRY COALITION FOR ECONOMIC RECOVERY; MECHANICAL CONTRACTORS ASSOCIATION OF BUFFALO & VICINITY, INC., and SAMUEL D. MAGAVERN, SUZANNE C. DAVIS, as executors and representatives of the estate fo the late MARSHALL DAVIS; WESTERN

NEW YORK DUMP TRUCK OPERATORS ASSOCIATION, and LESLIE A. SPRAGGON; LOUIS D. MADIA, and BOILER MAKERS EMPLOYERS' ASSOCIATION" GREATER BU||FALO SHEET METAL & ROOFING ASSOCIATION, and PAUL GILBERT; ASBESTOS WORKERS, LOCAL UNION NO. 4 and JACK KELLEHER; BOILER MAKERS LOCAL UNION NO. 7 and JOHN BARRY JARZYNSKI; BRICKLAYERS LOCAL UNION NO. 45 and JAMES JOSEPH McGOVERN; ELECTRICAL WORKERS LOCAL UNION NO. 41, and MELBOURNE H. RICE; ELEVATOR CONSTRUCTORS LOCAL NO. 14, and DONALD M. WINKLE; GLAZIERS LOCAL UNION NO. 660, and JAMES J. COYLE; LATHERS LOCAL UNION NO. 32, and FRANK A. SCIABARRASI; PAINTERS DISTRICT COUNCIL NO. 4 and JIM V. GRIFFO; PLASTERERS LOCAL UNION NO. 9, and SAMUEL F. ANTONIO; PIPE FITTERS LOCAL UNION NO. 74, and ANGELO PAGANO; SHEET METAL WORKERS LOCAL UNION NO. 71, and GEORGE J. CUDDIHY; STEAMFITTERS LOCAL UNION NO. 395, and DONALD J.

BLAIR; TILE MARBLE & TERRAZZO WORKERS - HELPERS LOCAL UNION NO. 449 and ERWIN M. WALKER; PLUMBERS LOCAL UNION NO. 36, and LARRY CONNELLY; as a Coalition of all White persons, representing the local unionized, construction industry who as the advisory committee were bound as sub-recipients by the fiduciary agreements of the defendants NFTA, NYS-DOT and UMTA on the federally funded Buffalo Subway Construction Project and who in concert with all other defendants named herein arbitrarily and capriciously ignored and breached their fiduciary agreements by executing and sanctioning discriminatory, exclusionary, monopolistic agreements with defendants UMTA via defendant, NFTA and NYS-DOT after having sanctioned and/or ratified labor agreements with defendants' White

individual officers of unionized prime contracting firms containing unconstitutional, discriminatory, exclusionary, monopolistic sub-contract provisions that caused the exclusion of plaintiff JONES' non-union firm's participation on the federally funded subway construction project, in violation of the "ACTS", statutory and regulatory provisions as set forth in Section IV herein as the "threshold" of the conspiracy.

SECTION XII

DEFENDANTS PARTIES

That at all times material to this merged Amended and Supplemental Complaint, defendants, WILLIAM TABORN and NELSON PETERS ASSOCIATES; OSCAR RAYFORD and UNIVERSAL EQUIPMENT and CONSTRUCTION CO.; EDWARD COLE and TESCO DISTRIBUTING; CARMEN A. GALLO and AMIGA CONSTRUCTION; EMANUEL HUMES and HUMES INDUSTRIAL & ELECTRICAL and HUMES CONTRACTING CO.; JOSEPH MYLES and TRASHLAND TRUCKING; ROBERT CHESTER and KEYSTONE STEEL; ROBERT L. PITTS and P & S SUPPLY; JAMES LYLE and L & W CONCRETE; DEVILUS GRAY and AFTCO INTERNATIONAL TRADING CO.; PAUL HARRISON and DOWNTOWN DUMP TRUCK SERVICE; DEAN WILLIAMS and NATIVE AMERICAN CONSTRUCTION CO., RONALD M. FINO, THOMAS GIAMARRESI, CARL T. MASTYKARZ, WILLIAM STERLING AND ONYX CONSTRUCTION & EQUIPMENT CO.; WASHINGTON BENNETT, WHITWORTH FERGUSON, JR., and FERGUSON/BENNETT CO.; GLENN CLAYTOR and FRANK McGUIRE and CCC/IPPL

are minority and White persons and "MBE" "front" firms and a purported "MBE' assistant agency who in concert with all other defendants named herein, arbitrarily and capriciously obtained purported "MBE" contracts on the federally funded Buffalo Subway Construction Project totalling approximately $80,000,000.00 as part of the conspiracy to deprive plaintiff JONES of the benefits of his statutory entitlements on the project, in violatoin of his civil and constitutional rights to participate through his "MBE" non-union firm and share in the salaries, experiences, equities, dividends, profits and other benefits earmarked for the benefit of minority persons through their valid "MBE" firms on the federally funded Buffalo Subway Construction Project, and as part of the unlawful scheme and conspiracy

that allowed White persons and their firms to obtain salaries, experiences, equities, dividends, profits and other benefits earmarked for the benefit of minority persons through their valid "MBE" firms on the federally funded project, all in violation of the "ACTS" statutory and regulatory provisions as set forth in Section IV herein.

COUNT I

The plaintiff, JONES, realleges Section I through XII, as if they were fully restated as part of this Count, and alleges:

1. That defendant, NFTA, through its officers and administrators, commenced acting the unlawful conspiracy to use only White owned, unionized construction firms and minocity "front" firms to construct the federally funded Buffalo Subway Construction Project by making application tin 1976 to defendant UMTA's administrators for a mass transportation capital improvement grant under the "Civil Rights and Urban Mass Transportation Acts", which were amended May 15, 1978.

2. It was further part of the conspiracy that NFTA's officers and administrators falsely agreed that as a condition of receiving any federal financial assistance from the Department of Transporta-

tion, via defendant UMTA, they would comply with Title VI of the Civil Rights Act of 1964, 78 Stat., 252, 42 USC, 2000-d, 2000-4, and all requirements imposed by/ or pursuant to Title 49, Code of Federal Regulation, and other pertinent directives, to the end, and in accordance with the "ACTS", agreements and contracts and the statutory regulations as set forth herein in Section IV with no intent of doing so.

3. It was further part of the conspiracy that NFTA, its officers and administrators further falsely assured that they would take prompt measures necessary to effectuate the "MBE" program agreements with no intent of doing so; all in violation of the "ACTS" contracts, agreements, statutory and regulatory provisions as set forth herein Section IV, for the purpose of obtaining the grant upon unlawful, false

pretenses in order to allow white persons to obtain the benefits that were earmarked for the benefit of minority persons on the federally funded Buffalo Subway Construction Project.

COUNT II

Plaintiff JONES realleges Sections I through XII and Count I, as if they were fully restated as part of this Count and alleges:

1. That plaintiff JONES as a beneficiary of the "ACTS" and as the only minority who submitted bids to defendant NFTA, obtained plans, prepared and submitted seven (7) sealed bids with requests for assistance at defendant NFTA's scheduled bid openings on behalf of his solely owned "MBE" firm, being the competitive low bidder on four (4) separate cut and cover sections of the project totaling $56,602,478.00 in accord-

ance to his "MBE" firm's non-union status and low overhead bid factors.

2. Nonetheless, and in furtherance of the conspiracy, the defendant, NFTA, officers and administrators named herein Section VII, while acting in concert and under color with the other individual White defendants, and in breach of the aforementioned agreements did, arbitrarily, capriciously, intentionally and purposefully, with malice, reject each and every low bid and request for assistance submitted by plaintiff JONES in furtherance of the conspiracy to deprive plaintiff JONES of the benefit of his and his firm's non-union "MBE" statutory entitlements and because of his race and because of his "MBE" firm's general contracting non-union status, and to provide for White persons and their firms to unlawfully obtain the salaries, experiences, equities, dividends, profits,

and other benefits earmarked for the benefit of minority persons through their valid "MBE" firms on the federally funded Buffalo Subway Construction Project; all in violation of the "ACTS", agreements, contracts, statutory and regulatory provisions as set forth herein Section IV.

COUNT III

Plaintiff, JONES realleges Sections I through XII and Count I through II as if they were fully restated as part of this Count and alleges:

1. That although plaintiff JONES submitted four (4) competetive low bids on four (4) separate cut and cover contracts and requested mandated assistance on behalf of his non-union "MBE" firm in accordance to the "ACTS", agreements, contracts, statutory and regulatory provisions as set forth herein Section IV.

2. Nonetheless and in furtherance of the conspiracy, the defendant NFTA's officers and administrators, while acting under color and in concert with the other individual White defendants and in breach of their ageements, did, arbitrarily, capriciously, intentionally and purposely, with malice, awarded each and every contract low bidded by plaintiff JONES, to White owned unionized contracting firms in accordance to their unionized status and higher overhead and other cost bid factors; all in violation of the "ACTS", agreements, contracts, statutory and regulatory provisions as set forth herein in Section IV, for purposes of depriving plaintiff JONES of the benefits of his and his non-union "MBE" firm's statutory entitlements because of his race and because of his "MBE" firm's general contracting non-union status, and to provide for White

persons to obtain the benefits that were earmarked for the benefit of minority persons on the federally funded Buffalo Subway Construction Project.

COUNT IV

Plaintiff JONES realleges Sections I through XII and Counts I through III, as if they were fully restated as part of this Count and alleges:

1. That plaintiff JONES further submitted, on behalf of his non-union "MBE" firm, a construction manager's contract proposal to defendant NFTA's officers and administrators in order to participate on the project in accordance to defendant NFTA's "MBE" program agreement and in accordance to the "ACTS", contracts, agreements, statutory and regulatory provisions as set forth herein Section IV, after being rejected on the low bids.

2. Nonetheless, and in furtherance of the conspiracy, the defendant NFTA's officers and administrators, while acting under color and in concert with the other individual defendants and in breach of the aforementioned agreements, contracts, statutory and regulatory provisions as set forth herein Section IV, did, arbitrarily, capriciously, intentionally and purposely, with malice, ignore and disregard plaintiff JONES' construction manager's proposal, all in violation of the "ACTS", agreements, contracts, statutory and regulatory provisions as set forth herein Section IV, for the unlawful purpose of depriving plaintiff JONES of the benefits of his and his non-union "MBE" firm's statutory entitlements, because of his race and because of his "MBE" firm's general contracting non-union status, to unlawfully provide for White persons to obtain the

benefits that were earmarked for the benefit of minority persons on the federally funded Buffalo Subway Construction Project.

COUNT V

Plaintiff JONES realleges Section I through XII and Count I through IV as if they were fully restated as part of this Count and alleges:

1. That in addition, plaintiff JONES, in order to participate on the project, prepared and submitted eight (8) additional written contract proposals totaling $39,015,464.00 on behalf of his non-union "MBE" firm to the attention of the White defendants' officers and administrators, whose firms were awarded prime (general) contracts on the federally funded project.

2. Nonetheless, and in furtherance of the conspiracy, the White

defendants, contracts firms, officers and administrators named herein Section X, while acting under color, and in concert with the other defendants and in breach of the aforementioned agreements, did arbitrarily, capriciously, intentionally and purposely, with malice, reject and/or ignore plaintiff JONES' contract proposals, all in violation of the "ACTS", agreements, contracts, statutory and regulatory provisions as set forth herein Section IV, for the purpose of depriving plaintiff JONES of the benefits of his and his "MBE" firm's statutory entitlements because of his race and because of his "MBE" firm's general contracting non-union status, to unlawfully provide for White persons to obtain the benefits that were earmarked for the benefit of minority persons on the federally funded project.

COUNT VI

Plaintiff, JONES realleges Section I through XII and Count I through V as if

they were fully restated as part of this Count and alleges:

1. That the defendants' individual White officers and representatives of the defendants, coalition, associations, unions and counsel named herein Section XI as the dominating and controlling policy-making individuals on the project, while acting under color and in concert with the other defendants in accordance to their unconstitutional, monopolistic, discriminatory lock-out agreement as set forth in paragraphs 4 through 8 heren Section V, did enforce and cause plaintiff JONES' non-union "MBE" firm to be excluded from participating on the project for the purpose of depriving plaintiff JONES of his statutory entitlements because of his race and because of his "MBE" firm's general contracting non-union status and to unlawfully provide

for White persons to obtain the benefits that were earmarked for the benefit of minority persons on the federally funded project.

COUNT VII

Plaintiff JONES realleges Section I through XII and Count I through VI as if they were fully restated as part of this Count and alleges:

1. That the defendants' minority "fronts" individual persons named herein Section XII participated in the conspiracy as imposters and "fronts" by the methods of executing fraudulent non-beneficial contracts/agreements for the receipt of small cash payments and or salaries without profits and other benefits, for the unalwful purpose of deceiving the public and depriving plaintiff of the benefits of his and his non-union "MBE" firm's statutory entitlements because of his race, and

because of his "MBE" firm's general contracting non-union status and to unlawfully provide for White persons to obtain the benefits that were earmarked for the benefit of minority persons on the federally funded project.

COUNT VIII

Plaintiff JONES realleges Sections I through XII and Count I through VII as if they were fully restated as part of this Count and alleges:

1. That plaintiff JONES made numerous written complaints to defendant UMTA's individual officers and administrators named herein in Section VII complaining of the conspiracy, exclusionary and discriminatory actions by the defendants pertaining to their ignoring, excluding and rejecting his "MBE" firm's low bids, request

for assistance and contract proposals. Plaintiff JONES requested that defendant UMTA's officers and administrators enforce assistance in accordance to the "ACTS", contracts, agreements, statutory and regulatory provisions as set forth herein Section IV.

2. Nonetheless, and in furtherance of the conspiracy, the defendant UMTA's officers and administrators, while acting under color and in concert with the other individual defendants and in beach of their agreements, did, arbitrarily, capriciously, intentionally and purposely, with malice, declined to intercede and provide requested mandated enforcement assistances, all in violation of the "ACTS", contracts, agreements, statutory and regulatory provisions as set forth herein Section IV, for the unlawful purpose of depriving plaitniff JONES of the benefits of his and his non-union "MBE" firm's statutory

entitlements because of his race and because of his "MBE" firm's general contracting non-union status and to unlawfully provide for White persons to obtain the benefits that were earmarked for the benefit of minority persons on the federally funded project.

COUNT IX

Plaintiff JONES realleges Section I through XII and Counts I through VIII as if they were fully restated as part of this Count and alleges:

1. That defendant NYS DOT individual officers and administrators named herein Section IX, as co-sponsors and fiduciaries of the project, were fully aware of the conspiracy, exclusionary and discriminatory acts that were being committed by the defendants against plaintiff JONES'

interest, in violation of the "ACTS", contracts, agreements, statutory and regulatory provisions as set forth herein Section IV.

2. **Nonetheless, and in** furtherance of the conspiracy the defendant NYS DOT's officers and administrators while acting under color and in concert with the other other defendants, did, arbitrarily, capriciously, intentionally, purposely and with malice, decline to intercede and provide the necessary and required monitoring auditing and enforcement procedures to protect plaintiff JONES' staturoty entitlements, all in violation of the "ACTS", contracts, agreements, statutory and regulatory provisions as set forth herein Section IV, for the unlawful purpose of depriving plaintiff JONES of the benefit of his and his non-union "MBE" firm's statu-

tory entitlements because of his race and because of his "MBE" firm's general contracting non-union status and to unlawfully provide for White persons to obtain the benefits that were earmarked for the benefit of minority persons on the federally funded project.

COUNT X

Plaintiff JONES realleges Section I through XII and Count I through IX, as if they were fully restated as part of this Count and alleges:

1. That the White defendants, individual officers and administrators of the participating White owned contracting firms prepared and submitted false reports to defendant UMTA's administrators pertaining to the dollar amounts that were purportedly "earned" by minority ("front") firms on the federally funded project with

sanctions from the officers and administrators of defendants NFTA, NYS DOT and UMTA in furtherance of the conspiracy and in violation of the "ACTS", contracts, agreements, statutory and regulatory provisions as set forth herein Section IV, for the unlawful purpose of depriving plaintiff JONES of the benefits of his and his non-union "MBE" firm's statutory entitlements because of his race and because of his "MBE" firm's general contracting non-union status and to unlawfully provide for White persons to obtain the benefits that were earmarked for the benefit of minority persons on the federally funded project.

COUNT XI

Plaintiff JONES realleges Sections I through XII and Count I through X as if they were fully restated as part of this Count and alleges:

1. That the individual officers and administrators of defendant NFTA in furtherance of the conspiacy, made false reports to the public through the news media and to the defendant UMTA and NYS DOT pertaining to the dollar amounts that were purportedly "earned" by minority "front" firms on the project while acting in concert with defendants officers, representatives and administrators of defendants UMTA, NYS DOT's contracting firms, unions, associations, coalitions, counsel and minority "front" firms in furtherance of the conspiracy and in violation of the "ACTS", contracts, agreements, statutory and regulatory provisions as set forth herein Section IV, for the unlawful purpose of depriving plaintiff JONES of the benefit of his and his "MBE" firm's statutory entitlements because of his race and for the additional unlawful purposes as alleged.

COUNT XII

Plaintiff JONES realleges Sections I through XII and Count I through XI as if they were fully restated as part of this Count and alleges:

1. That although Congress enacted the Civil Rights Acts of 1866 and 1871, codified at 42 USC Section 1981, which provides in relevant part that "all persons within the jurisdiction of the United States shall have the same rights in every state and territory to make and enforce contracts..." as is enjoyed by white citizens"..."

2. Nonetheless, and in furtherance of the conspiracy, the defendants' individual officers, administrators and representatives of NFTA, NYS DOT, UMTA, White owned contracting firms, unions, associations, coalitions, counsel and minority "front" persons, while

acting in concert and under color, purposely, with malice, discegarded plaintiff JONES' statutory and constitutional rights and deprivded him of the benefits of his and his "MBE" firm's statutory entitlements because of his race and for the additional unlawful purposes as alleged.

COUNT XIII

Plaintiff Jones reallegs Sections I through XII and Count I through XII as if they were fully restated as part of this Count and alleges:

1. That although the United States Thirteenth Constitutional Amendement provides for the abolishment of slavery and involuntary servitude so as to grant Blacks their property rights and other rights as is enjoyed by White citizens.

Nonetheless, and in furthernace of the conspiracy, the defendants, individuals, officers, administrators, and representatives of defendants, NFTA, NYS DOT, UMTA, White owned contracting firms, unions, associations, coalitions, counsel and minority "fronts" persons, while acting in concert and under color, arbitrarily, capriciously, intentionally and purposely, with malice, disregarded plaintiff JONES' statutory and constitutional rights and deprived him of his statutory entitlements because of his race and for the additional unlawful purposes as alleged.

COUNT XIV

Plaintiff JONES realleges Sections I through XII and Count I through XIII as if they were fully restated as part of this Count and alleges:

1. That although the United States Fourteenth Constitutional Amendment provides in relevant part that:

> **"no state shall make or enforce any laws which shall abridge the privileges of ...citizens of the United States",..."nor deny any person within its jurisdiction the equal protection of the laws".**

2. Nonetheless, and in furtherance of the conspiracy, the individual defendants and each of them, while acting under color and in concert with each other, did, arbitrarily, capriciously, intentionally, purposely and with malice, carelessly disregarded and ignored plaintiff JONES' constitutional rights, and deprived him of the benefits of his and his non-union "MBE" firm's statutory entitlements because of his race and for the additional purposes as alleged.

COUNT XV

Plaintiff JONES realleges Section I through XII and Count I through XIV as if they were fully restated as part of this Count and alleges:

1. That plaintiff JONES is a beneficiary of the "ACTS" and performed all the requirements to obtain mandated assistance and contracts on the federally funded project in accordance with the "ACTS", agreements, contracts, statutory and regulatory provisions under the "ACTS" as set forth herein Section IV.

2. Nonetheless, and in furtherance of the conspiracy, the individual defendants and each of them while acting under color and in concert with each other, did, arbitrarily, capriciously, intentionally, purposely and with malice, carelessly disregarded and ignored plaintiff JONES' statutory and constitutional rights and deprived him of the benefits of his and his non-union "MBE" firm's statutory entitlements because of his race,for the additional

unlawful purposes as alleged, which was neither privileged, nor sanctioned by law, causing plaintiff JONES to suffer substantial economical and financial losses and to suffer individual embarrassment, humiliation, severe and extreme emotional distress and mental anguish, all to his detriment and individual damages.

COUNT XVI

That as a result of the foregoing intentional, careless and malicious acts by the defendants and each of them acting in concert and against plaintiff JONES, plaintiff suffered from the following individual injuries:

(a) Loss of acquiring additional individual heavy construction experiences;

(b) Loss of his individual civil and constitutional rights to have participated on the federally funded Buffalo Construction Project, as owner and day-to-day administrator of his non-union

"MBE" construction firm;

(c) Loss of individual salaries for a minimal period of over five (5) years, that would have been obtained in the administration and overseeing of his non-union "MBE" firm's contracts on the project;

(d) Loss of the benefits of his non-union "MBE" firm not having participated on the federally funded project as a non-union "MBE" prime contractor;

(e) Loss of the benefits of his "MBE" firm not having acquired and retained the heavy construction material inventories on the contracts low bid by plaintiff JONES on the project;

(f) Loss of the benefits of his non-union "MBE" firm's not having acquired and retained heavy construction equipment that was part of the cost to perform the contracts low bid by plaintiff JONES on the project;

(g) Loss of the benefits of his non-union "MBE" firm not having acquired and retained miscellaneous construction equipment that was part of the cost to perform the contracts low bid by plaintiff JONES on the project;

(h) Loss of the benefits of not receiving engineering and other mandated technical assistance on the contracts low bid by plaintiff JONES on the project;

(i) Loss of the benefits of a financial enhanced non-union "MBE" profitable corporate firm;

(j) Loss of benefit of individual dividends;

(k) Loss of benefit of individual achievements and enjoyment from participating on the project;

(1) Loss of benefits of an individual's improved social and economical status.

Plaintiff JONES has been slandered and suffered individual embarrassment, humiliation, severe and extreme emotional distress and mental anguish, all to his detriment and individual damages in the total sum of $17,500,000.00, by virtue whereof plaintiff JONES is entitled to be redressed and to recover compensatory damages in the sum of $17,500,000.00, plus accumulated interest thereon.

COUNT XVII

1. That at all material times, and doing the times alleged herein, defendants, and each of them, knew that plaintiff JONES was "Black" and a member of the protected class under Title VI, and further knew that plaintiff JONES and his non-union "MBE" firm was socially and economically disadvantaged due to their

financial and social status and total inability to obtain financing and bonding, and was relying upon defendant NFTA's officers and administrators and upon defendant contractors, White officers and administrators for assistance in the obtaining of bonding and financing and contracts on the federally funded Buffalo Subway Construction Project, as mandated, under the "ACTS", contracts, agreements, statutory and regulatory provisions as set forth herein Section IV.

2. Nonetheless, defendant NFTA's officers and administrators, unionized contractors, White officials and administrators, and each of them, while acting in concert with all other defendants, did, under color and in breach of their fiduciary agreements, wantonly, fraudulently, oppressively, maliciously, intentionally, pur-

posely, arbitrarily and capriciously, through an unlawful conspiracy, discriminated against and deprived plaintiff JONES of the benefit of his and his "MBE' firm's statutory entitlements to participate on the federally funded Buffalo Subway Construction Project, in furtherance of their unlawful scheme and conspiracy that allowed White persons and their firms to obtain the experiences, salaries, equities, dividends, profits and other benefits earmarked for the benefit of minority persons through their valid "MBE" firms on the federally funded Buffalo Subway Construction Project, by virtue whereof plaintiff JONES is entitled to recover punitive damages in the sum of $50,000,000.00 (fifty million) dollars.

WHEREFORE, plaintiff JONES prays for judgment in compensatory damages against the defendants, and all of them, in the amount of $17,500,000.00, plus accumulated

interest thereon, together with judgement for punitive damages against the individual defendants, and all of them, in the amount of $50,000,000.00, and the recovery of reasonable attorney fees, together with the costs and disbursements of this action and for an Order designating this action a Class Action, establishing a time period for other affected individuals of Plaintiff Jones' class to join this action through their counsel and/or pro se, to proceed jointly with Plaintiff Jones' pro se, to the merits.

And for such other and further relief as this Court deems just, equitable and proper.

DATED: Buffalo, New York
September 6, 1988

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